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Supreme Court, U.S.
FILED
JAN 18 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-369

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

GENERAL MOTORS CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 5, 1989
CERTIORARI GRANTED DECEMBER 4, 1989

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NOTICE

The opinion of the United States Court of Appeals for the First Circuit, which is reported at 876 F.2d 1060, is printed in the Appendix to the Petition for Certiorari and is not reprinted here.

A. Relevant Docket Entries, United States Court of Appeals for the First Circuit

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

CASE NO. 881799

United States of America,

v.

General Motors Corporation,

Date 1988	Filings—Proceedings.
Aug. 10	Record on appeal in one volume, received and filed. Case docketed and notices mailed. (eml)
.....	
Sept. 20	Brief for appellant and appendix received and filed. Notices mailed.
Oct. 20	Brief for General Motors Corporation, Appellee received and filed. (bf)
Oct. 21	Brief of Amicus Curiae Commonwealth of Massachusetts received and filed. (bf)
Nov. 2	Reply brief for the United States received and filed. (bf)
Dec. 29	Assigned for hearing at the January, 1989 session. (jms)
Jan. 11	Heard before CH. J. Campbell, JJ. Coffin and Torruella. (jms)
June 7	JUDGMENT: The judgment of the District Court is reversed and the cause is remanded to the District Court for further proceedings not inconsistent with the opinion filed this date. Opinion of the Court by Coffin, J. Notices mailed. (lp)

June 21	Itemized and verified bill of costs in favor of the appellant, received and filed. (lp)
June 29	Mandate issued. Copy filed. Taxation of costs filed. Original papers to follow. Notices mailed. (pm)
July 28	Original papers returned to the district court. (pm)
Sept. 12	Notice of filing petition for certiorari to the Supreme Court (89-369) September 5, 1989, received and filed. (cm)
Dec. 7	Order from the Supreme Court granting the petition for writ of certiorari (December 4, 1989) received and filed. (lb)
Dec. 28	Certified copies of proceedings in six volumes sent to the Supreme Court (cm)

B. Relevant Docket Entries, United States District Court for the District of Massachusetts

87-2068-Mc

Date:	Nr.	Proceedings
Aug.17	01	COMPLAINT filed. Summons, 18/ I issued.
8/29/87	02	Consent Mtn for Extension of time within which to file a responsive pleading, up to and including 9/ 18/87, filed.
SEP 4	03	Copy of Letter from Andrew S. Hogeland, AUSA, to Amy Woodward, Esq., dated 9/3/87, filed, with attachment.
SEP 4	04	Letter to court from Amy Woodward as acknowledgment receipt of mail, filed.
....		
SEP 18	07	Deft. GMC Motion to Dismiss or in the Alt. for SJ, filed, c/s.
SEP 18	08	Affidavit of William J. McFarland, filed, c/s.
....		
SEP 25	10	Memo in support of GMC Motion to Dismiss or in the Alt. for Summary Judgment, filed, c/s.
OCT 1	11	Stipulation and Order Extending Time for Response to GMC Motion to Dismiss or for Summary Judgment, filed, c/s.
Oct 20		*McNaught, D.J.* ORDER issued re # 6: Approved by the Court...cc/cl.
....		

OCT 22	14	Pltf's motion to Amend Complaint, filed, c/s.
OCT 22	15	Memorandum of Pltf in Support of Motion to Amend Complaint, FILED, C/S.
....		
OCT 23	17	P's Memo in Oppos. to Motion of GM to Dismiss or in the Alternative foe SJ, filed, c/s.
NOV 4	18	Letter to Ms. Johnson, from Amy Woodward requesting oral argument after 11/16/87 re GM's Motion to Dismiss or for Summary Judgment, filed.
NOV 4	19	Deft's Response to Amended Complaint by GMC, filed, c/s.
NOV 4	20	Deft. Motion for Leave to File Reply memo filed, c/s.
NOV 4	21	Deft's Response to motion for Leave to File Amended Complaint, filed, c/s.
NOV 6	22	File referred to Magistrate Saris re 14 with memo in Support 15 and ##19 and 21 responses to Deft.
NOV 16	23	McNAUGHT, D.J. ORDER referring file to Magistrate issued to parties.
NOV 16	24	McNAUGHT, D.J. File referred to Magistrate Saris for Rule 16(b) Sched. Con. and all pretrial matters.
NOV 16	25	Reply Brief for Deft. GMC in Support of its Motion to Dismiss or in the Alternative for Summary Judgment, filed, c/s.
NOV 13		SARIS, U.S.M. ORDER issued re #14: Allowed....cc/cl.
NOV 13	26	FIRST AMENDED COMPLAINT filed.

NOV 24	27	SARIS, U.S.M. NOTICE OF SCHED. conf. set for 1/5/88 at 12:20 a.m.
DEC 8	28	Motion to Stay Discovery and Proceedings before the Magistrate by Defendant filed, c/s.
DEC 18	29	Stipulation and Order Extending Time for Response to General Motors Corp's Motion to Stay Discovery and Proceedings Before the Magistrate, filed, c/s.
DEC 18	30	Letter to Magistrate Saris from Kenneth A. Reich, filed.
1988		
JAN 4		*SARIS, U.*S.M. Order issued re #29: Stipulation approved....cc/cl.
JAN 5	31	Pltf's Memo in Oppos. to Motion of GM to Stay Discovery and Proceedings Before Magistrate, filed, /s.
....		
JAN 13	33	GM Reply Memo in Response to P's memo in Oppos. to Motion to Stay Discovery and Proceedings Before Magistrate, filed, c/s.
JAN 15		SARIS, U.S.M. Order Issued re #32: Motion Allowed.... cc/cl.
JAN 15	34	SARIS, U.S.M. Notice of Status Conf. and D's Motion to Stay Disc. and Proc. set for Wed. 3/2/88 at 11:20 a.m. issued to parties.
MAR 9	35	Memo to Mary Johnson, Clerks, from Ellen Hayes re Court's consideration of Docket #07, D's Motion to Dismiss; Mag. Saris allowed stay of proceedings pending disposition of motion, filed.

MAR 11	36	MCNAUGHT, D.J. NOTICE OF HEARING set for 5/6/88 at 9:30 a.m. re D's motion #07....issued to all parties.....c/ccl.
.....		
MAY 6	38	Letter to the Court from Atty. Reich, Foley, Hoag, & Eliot re GM pending M/Dismiss or in Alt. for SJ, enclosing slip opinion, filed, c/s.
MAY 6	39	*McNAUGHT, D.J.* Clerks Notes: Counsel appear for hearing on deft's motion to dismiss or for summary judgment. After hearing, Court takes matter under advisement.
MAY 16	40	*McNAUGHT, D.J.* MEMO AND ORDER.....D's Motion for SJ is GRANTED.....cc/cl.
MAY 18		CASE CLOSED.
JUNE 1	40	*McNAUGHT, D.J.* JUDGMENT entered.....In accordance with the Memo and Order dated 5/16/88 granting d's motion for sj, it is hereby ORDERED..... JUDGMENT for the Defendant.....cc/cl.

C. Relevant Pleadings, Motions, and Exhibits

1. Complaint (August 6, 1987)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No.
87-2068-MC

UNITED STATES OF AMERICA,
Plaintiff,

v.

GENERAL MOTORS CORPORATION,
Defendant.

COMPLAINT

Plaintiff, the United States of America ("United States"), at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

NATURE OF ACTION

1. This is a civil action pursuant to Section 113(b) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(b), seeking civil penalties for emissions of volatile organic compounds ("VOC") in violation of the Massachusetts State Implementation Plan and the Act and injunctive relief to abate such emissions.

JURISDICTION AND VENUE

2. This court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this District pursuant to 42 U.S.C. § 7413(b) and 28 U.S.C. § 1391(b) and (c) because the alleged violations took place in the District of Massachusetts and because the Defendant is licensed to do business and is doing business in Massachusetts.

4. Authority to bring this action on behalf of the EPA Administrator is vested in the United States Department of Justice pursuant to Section 305 of the Act, 42 U.S.C. § 7605.

5. Notice of the commencement of this action has been given to the Massachusetts Department of Environmental Quality Engineering ("DEQE") in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b).

DEFENDANT

6. Defendant, General Motors Corporation ("General Motors"), is a Delaware corporation authorized to do business in Massachusetts, with its principal place of business in Detroit, Michigan. General Motors is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

7. General Motors owns and operates an automobile assembly and painting facility located in Framingham, Massachusetts (the "Framingham plant"). From at least 1980 to the present, automobiles have been painted at the Framingham plant by a process that includes a topcoating step and, when necessary, a final repair coating step. The topcoatings and final repair coatings that have been and continue to be used at the Framingham plant contain VOCs which are emitted into the atmosphere during the surface coating process.

STATUTORY AND REGULATORY FRAMEWORK

8. Section 109(a) of the Clean Air Act, 42 U.S.C. § 7409(a), requires the Administrator of EPA ("the Administrator") to promulgate primary and secondary National Ambient Air Quality Standards ("NAAQS") for any air pollutant for which air quality criteria are issued. The primary standard must be designed "to protect the public health" with "an adequate margin of safety." 42 U.S.C. § 7409(b)(1). The secondary standard must be sufficient "to protect the public welfare from any known or anticipated adverse effects" of the pollutant. 42 U.S.C. § 7409(b)(2).

9. On February 8, 1979, the Administrator promulgated, pursuant to Section 109, a combined primary and secondary NAAQS for the photochemical oxidant known as ozone, which standard is codified at 40 C.F.R. § 50.9.

10. To achieve the NAAQS for ozone, Section 110(a) of the Act, 42 U.S.C. § 7410(a), requires each State to promulgate and submit to EPA for approval a State Implementation Plan ("SIP") containing regulations for reducing emissions of air pollutants from sources within the State that contribute to ozone formation. Each SIP is federally enforceable, if approved. Each SIP is to achieve and maintain the NAAQS within an established time limit, 42 U.S.C. § 7410, which in most cases must be no later than December 31, 1982, and may not in any case be later than December 31, 1987, 42 U.S.C. § 7502. In addition, each SIP applicable to a "nonattainment area"—an area where EPA has determined that an air pollutant exceeds the NAAQS for that pollutant—must require such reductions in emissions from existing sources of the pollutant in the area as may be achieved through the adoption of, at a minimum, reasonably available control technology. 42 U.S.C. § 7502(b)(2).

11. The entire state of Massachusetts is a nonattainment area for the primary ozone NAAQS. *See* 40 C.F.R. § 81.322. VOCs are an "air pollutant," as defined in Section 302(g) of the Act, 42 U.S.C. § 7602(g), that contributes to ozone formation.

12. Massachusetts, through its DEQE, has promulgated regulations codified at 310 CMR 7.18(7) which limit VOC emissions from automobile surface coating lines. In the form approved by EPA on September 16, 1980, *see* 45 Fed. Reg. 61293, 61295 (copy attached as Exhibit 1), and as amended effective November 9, 1983, *see* 48 Fed. Reg. 51480, 51482 (copy attached as Exhibit 2), these regulations (hereinafter the "automobile coating SIP provisions") are incorporated in the Massachusetts SIP.

13. The Massachusetts automobile coating SIP provisions provide in part:

> (7) *U Automobile Surface Coating.* No person owning, leasing, or controlling the operation of any automobile assembly plant shall cause, allow, or permit emissions therefrom in excess of those emission limitations set forth in the following table and within the time schedules specified in the following table.

Table 5
Emission Limitations
Automobile Surface Coatings

U Volatile Organic Compounds

Emission Source	*Emission Limitations* Lbs. of volatile organic compounds per gallon of coating (excluding water) at application	*Compliance Date* Achieve Full Compliance with emission limitation
Topcoat application, flash off area, and oven	5.8*	By December 31, 1979
	5.0*	By December 31, 1982
	and 2.8*	By December 31, 1985
Final repair application, flash off area, and oven	4.8*	By December 31, 1985

* *Note:* Compliance with these emission limitations shall be based upon an arithmetic average of topcoat coatings and final repair coatings.

14. The Massachusetts automobile coating SIP provisions, as federally approved, apply and at all relevant times

have applied to the topcoat and final repair coating lines at General Motors' Framingham plant.

CLAIM FOR RELIEF

15. General Motors owns and operates automobile topcoat lines and a final repair coating line at the Framingham Plant which are subject to the Massachusetts automobile coating SIP provisions. VOC emissions from coatings on these lines have exceeded the emission limits in the automobile coating SIP provisions during virtually every day the lines have been in operation from January 1, 1986 to the present. There is no pollution control equipment operating on these lines to control VOC emissions.

16. Under Section 113(a) of the Act, 42 U.S.C. § 7413(a)(1), if the Administrator of EPA finds a person to be in violation of an applicable SIP, the Administrator shall notify the person and the state in which the SIP applies. If the violation extends beyond the thirtieth day after the date of the Administrator's notification, the Administrator may bring a civil action under Section 113(b)(2) of the Act for injunctive relief, civil penalties of up to $25,000 per day of violation, or both.

17. On August 14, 1986, EPA issued General Motors a Notice of Violation under Section 113(a) of the Act, 42 U.S.C. § 7413(a), citing violations of the Massachusetts automobile coating SIP provisions on the topcoat and final repair coating lines at the Framingham plant. EPA sent a copy of the Notice of Violation to the Massachusetts DEQE pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1).

18. General Motors received the Notice of Violation on August 18, 1986.

19. After September 17, 1986, VOC emissions from coatings used on the topcoat and final repair coating lines at the Framingham plant have continued to exceed the emis-

sion limits set forth in the Massachusetts automobile coating SIP provisions.

20. General Motors has, therefore, violated the Massachusetts automobile coating SIP provisions and Section 113 of the Act, 42 U.S.C. § 7413. General Motors will continue to operate the topcoat and final repair coating lines at the Framingham Plant in violation of the automobile coating SIP provisions and Section 113 of the Act unless restrained by order of this Court.

WHEREFORE, Plaintiff, United States of America, respectfully prays that this Court enter judgment against Defendant for:

(a) A permanent injunction restraining and preventing Defendant from operating the topcoat and final repair coating lines at the Framingham Plant in violation of the Massachusetts automobile coating SIP provisions and the Act;

(b) Civil penalties of up to $25,000 for each day on which Defendant has operated the topcoat and final repair coating lines at the Framingham Plant in violation of the Massachusetts automobile coating SIP provisions;

(c) Plaintiff's costs of this action; and

(d) Such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

/s/ Roger J. Marzulla
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2. Defendant General Motors Corporation's Motion to Dismiss or in the Alternative for Summary Judgment (September 18, 1987)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action
No. 87-2068 MC

UNITED STATES OF AMERICA,
Plaintiff,

v.

GENERAL MOTORS CORPORATION,
Defendant.

DEFENDANT GENERAL MOTORS CORPORATION'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Defendant General Motors Corporation moves the Court pursuant to Rules 12(b)(1) and (6) and 56 of the Federal Rules of Civil Procedure for an order of dismissal or, in the alternative, for summary judgment. The grounds of this motion are that the complaint failed to state a claim upon which relief can be granted, and the Court does not have subject matter jurisdiction.

In the alternative, General Motors submits that there are no genuine issues to be tried as to any material fact, and defendant is entitled to summary judgment as a matter of law.

In support of this motion, defendant General Motors submits the accompanying memorandum, affidavit of William J. McFarland with exhibits, and a statement of material facts as to which there is no genuine issue to be tried.

REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 17(c) of the Rules of this Court, defendant General Motors Corporation requests oral argument on this motion. Because of the important issues of federal-State relationships involved in this case, and the impact on General Motors of the pendency of this suit, we request that argument be scheduled as soon as the business of this Court permits after briefing is completed on this motion.

Respectfully submitted,

/s/ Theodore L. Garrett
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September 18, 1987

3. General Motors' Statement of Material Facts as to Which There Is No Genuine Issue to Be Tried (September 18, 1987)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action
No. 87-2068 MC

UNITED STATES OF AMERICA,
Plaintiff,

v.

GENERAL MOTORS CORPORATION,
Defendant.

GENERAL MOTORS' STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED

Pursuant to Rule 18 of the Local Rules of this Court, defendant General Motors Corporation (GM) submits the following statement of material facts as to which there is no genuine issue to be tried:

1. GM owns and operates an automobile assembly plant in Framingham, Massachusetts—the only automobile assembly plant in Massachusetts. Among the operations at the Framingham plant are automobile painting. Complaint ¶ 7.

2. In May 1979, the Commonwealth of Massachusetts promulgated a regulation, 310 CMR 7.18(7), limiting emissions of Volatile Organic Compounds (VOCs) from automobile surface coating, including topcoat and final repair painting operations. The original final compliance date in

this regulation for these operations was December 31, 1985. Complaint ¶¶ 12, 13.

3. On October 20, 1981, EPA published a Clean Air Act policy statement allowing for the deferral of the compliance dates in State Implementation Plan (SIP) regulations for automobile painting operations. 46 *Fed. Reg.* 51386 (1981). (A copy of this EPA policy notice is attached as Exhibit B to the Affidavit of William J. McFarland.)

4. In 1984, GM requested an extension to December 31, 1987, of the compliance deadline for its Framingham topcoat and final repair paint operations. GM's 1984 request to the Commonwealth was based on proposed abatement controls of its then-existing lacquer painting facilities. (A copy of GM's November 20, 1984 request is attached as Exhibit C to the McFarland Affidavit).

5. On June 7, 1985, GM informed the Commonwealth of its plans to comply by replacing the existing topcoat and final lacquer operations with a new lower-emitting basecoat/clearcoat (BC/CC) enamel paint system. GM stated that an extension of time until December 31, 1987, was needed to allow construction of the new painting facilities. (A copy of GM's June 7, 1985 letter is attached as Exhibit D to the McFarland Affidavit.)

6. Following a public hearing, the Commonwealth of Massachusetts took final action on December 30, 1985, amending 310 CMR 7.18(7) to extend the topcoat and final repair automobile paint compliance deadline to August 31, 1987. (A copy of this amendment is attached as Exhibit E to the McFarland Affidavit.)

7. On December 30, 1985, the Commonwealth of Massachusetts submitted 310 CMR 7.18(7) to EPA for approval as a revision to the State Implementation Plan (SIP). (A copy of this December 30, 1985, SIP revision is attached as Exhibit F to the McFarland Affidavit.)

8. GM continued to operate its then-existing topcoat and final repair lacquer paint facilities until July 7, 1987, when these paint facilities were permanently shut down. McFarland Affidavit, ¶ 13.

9. At the time this suit was filed by the United States on August 17, 1987, and to the present date, EPA has taken no final action on the SIP revision to 310 CMR 7.18(7) submitted by the Commonwealth on December 30, 1985. *Id*, ¶ 14.

Respectfully submitted,

/s/ Theodore L. Garrett
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September 18, 1987

4. Affidavit of William J. McFarland (September 16, 1987)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 87-2068 MC

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL MOTORS CORPORATION,

Defendant.

City of Detroit)
County of Wayne) s.s.:
State of Michigan)

AFFIDAVIT OF WILLIAM J. McFARLAND

William J. McFarland, being duly sworn, deposes and states as follows:

1. I am a development engineer for the General Motors Corporation Environmental Activities Staff in Warren, Michigan. My responsibilities include advice and assistance to GM in connection with compliance with federal and state environmental requirements.

2. This affidavit is submitted in connection with *United States of America* v. *General Motors Corporation*, USDC D. Mass., Civil Action No. 87-2068 MC. I have personal knowledge of the facts relating to this action.

3. GM owns and operates an automobile assembly plant in Framingham, Massachusetts—the only automobile assembly plant in Massachusetts. The assembly process at

the plant includes the painting of newly-assembled automobiles. Topcoat and final repair are two painting operations performed at the plant.

4. In 1979, the Commonwealth of Massachusetts promulgated a regulation, 310 CMR 7.18(7) limiting Volatile Organic Compound (VOC) emissions from automobile painting operations, including topcoat and final repair. These emission limits were intended to reflect "Reasonably Available Control Technology" (RACT). 42 U.S.C. 7502(b)(3). The original final compliance date in this regulation for topcoat and final repair operations was December 31, 1985. A copy of these regulations is attached as Exhibit A.

5. On October 20, 1981, EPA published a policy statement for the deferral of the RACT compliance dates in State Implementation Plans (SIP) for automobile painting operations. 46 *Fed. Reg.* 51386 (1981). The policy states that compliance dates for automobile paint emission limits may be deferred by the states until 1987 so that an orderly national implementation effort to achieve final RACT compliance could be followed. EPA noted that the automobile industry was developing new lower-emitting coatings, including basecoat/clearcoat (BC/CC), and that granting a deferral would give the industry necessary time to allow more cost-effective techniques to be developed. The policy indicated that EPA would be willing to approve state SIP revisions deferring compliance deadlines up to 1987. A copy of this EPA policy is attached as Exhibit B.

6. Pursuant to EPA's October 20, 1981 policy statement, GM requested of the Commonwealth an extension to December 31, 1987 of the topcoat and final repair compliance deadline for its Framingham paint operations. GM's initial compliance proposal to the Commonwealth was based on proposed abatement control of its then-existing lacquer painting facilities. A copy of GM's November 20, 1984 request is attached as Exhibit C.

7. On June 7, 1985, GM informed the Commonwealth of its plans to comply by replacing the then-existing lacquer painting operations at Framingham with a new, lower emitting BC/CC enamel paint system. GM noted that the new paint system would enable the plant to produce vehicles with a finish quality competitive in the world market. GM stated that an extension of time until December 31, 1987, was needed to allow for construction of the new painting facilities. A copy of GM's June 7, 1985 letter is attached as Exhibit D.

8. On December 16, 1985, the Commonwealth of Massachusetts Department of Environmental Quality Engineering (DEQE) held a public hearing on its proposed revision of 310 CMR 7.18(7) to extend the topcoat and final repair compliance deadline to December 31, 1987. At this hearing, GM requested approval of the proposed revision. An EPA representative, the Chief of EPA State Air Programs Branch, did not oppose the proposed revision but expressed reservations concerning emissions during the extension and limits for the new paint facilities. (See DEQE summary of hearings, included in Exhibit F.)

9. On December 30, 1985, the Commonwealth of Massachusetts took final action amending 310 CMR 7.18(7) to extend the topcoat and final repair compliance deadline to August 31, 1987. This date was based on GM's statement that it would shut down the then-existing lacquer paint operations by August 31, 1987. A copy of this amendment is attached as Exhibit E.

10. On December 30, 1985, the Commonwealth of Massachusetts submitted amended 310 CMR 7.18(7) to EPA for approval as a SIP revision. The Commonwealth's submission included a copy of the public notice, a certification concerning the public hearing, a summary of testimony, a decision memorandum, and the support document for the revision. A copy of this December 30, 1985, SIP revision is attached as Exhibit F.

11. On August 14, 1986, EPA issued a Notice of Violation to GM alleging that the Framingham plant was violating 310 CMR 7.18(7) as approved by EPA in 1980 and 1983. The Notice of Violation does not mention the December 30, 1985 revision of regulation 310 CMR 7.18(7) by the Commonwealth. The Notice of Violation only addressed the then-existing lacquer paint operations; the new BC/CC paint facilities were still under construction and not in operation. A copy of the Notice of Violation is attached as Exhibit G.

12. On September 9, 1986, EPA held a conference with GM on the Framingham Notice of Violation. At the conference, GM maintained it was in compliance with the topcoat and final repair limitations contained in revised 310 CMR 7.18(7). GM stated that this revision was made pursuant to and consistent with EPA's October 20, 1981 policy. Furthermore, GM challenged the validity of the Notice of Violation because of EPA's failure to take final action on revised 310 CMR 7.18(7) within four months as required by the Clean Air Act.

13. Pursuant to revised 310 CMR 7.18(7), GM continued to operate its then-existing topcoat and final repair lacquer paint facilities until July 7, 1987, at which time such facilities were permanently shut down.

14. EPA has taken no final action on the SIP revision to 310 CMR 7.18(7) submitted by the Commonwealth on December 30, 1985.*

/s/ William J. McFarland
William J. McFarland

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* On December 2, 1986, EPA published a proposed disapproval of the SIP revision. 51 *Fed. Reg.* 43394 (1986). EPA's notice states that a deferral should be obtained by an enforcement order rather than a SIP revision. In response, GM and the Commonwealth of Massachusetts submitted comments supporting the validity of the revision and requesting EPA approval.

Sworn and subscribed to before me
this 16th day of September, 1987

/s/ Mary de Freitas
Notary Public

MARY DE FREITAS
Notary Public Oakland County, Mich.
Acting in Wayne County
My Commission Expires December 11, 1990

a. Exhibit A: Commonwealth of Massachusetts, Office of the Secretary of the Commonwealth, Regulation Filing and Publication Form

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH

REGULATION FILING AND PUBLICATION FORM

1. REGULATION CHAPTER NUMBER AND HEADING: 310 CMR 7.18: Air Pollution Control Regulations
2. NAME OF REGULATING AGENCY: Department of Environmental Quality Engineering
3. READABLE LANGUAGE SUMMARY: (Categories of persons, organizations, businesses affected, general purposes and requirements of regulation)

These regulation amendments pertain to the control of volatile compounds from certain source categories within the state. Specifically they regulate the emission of hydrocarbons from the following industrial processes: metal furniture coating, metal can surface coating, large appliance surface coating, magnet wire insulation coating, automobile surface coating, and solvent metal degreasing, as well as petroleum marketing.

4. AGENCY CONTACT FOR ADDITIONAL INFORMATION: Vaughan M. Steeves
Address: Room 320, 600 Washington Street, Boston, MA 02111 Phone: 727- 5246
5. PUBLICATION REFERENCE: Register Issue 159 Date: 5/24/79

6. EFFECTIVE DATE: When Published:_____
After Publication On:_____

A TRUE COPY ATTEST
/s/ Michael Joseph Connolly
MICHAEL JOSEPH CONNOLLY
SECRETARY OF STATE
DATE 5/24/79 CLERK C.M.

310 CMR 7.18: AIR POLLUTION CONTROL REGULATIONS

Volatile Organic Compounds

Section 7.18 U Volatile Organic Compounds.
(1) U Application.

(a) Section 7.18 in its entirety shall apply to solvent metal cleaning; and facilities which emit volatile organic compounds in the application of surface coating to automobiles, metal cans, metal furniture, large appliances, and insulation of magnet wire.

(b) For the purposes of Section 7.18 in its entirety methane, ethane, 1,1,1-Trichloroethane (Methyl Chloroform), and Trichlorotrifluoroethane (Freon 113) shall be exempt.

(2) U Compliance with Emission Limitations

(a) Persons owning, leasing or controlling the operation of any facility described in 310 CMR 7.18(3), 7.18(4), 7.18(5), and 7.18(6) shall achieve full compliance by July 1, 1980 with the regulatory emission limitation applicable to such facility or take the actions shown below:

1. justify to the Department that additional time is needed, and

2. submit a proposed plan and compliance schedule for said facility to the Department not later than January 1, 1980.

Justification for additional time to comply with regulatory emission limitations, and submittal of proposed plans and compliance schedules are subject to review and approval by the Department and must provide for compliance with applicable regulatory emission limitations as expeditiously as practicable, but in no case later than July 1, 1982.

All compliance schedules for process equipment replacement or modification, or installation of control

equipment shall provide for periodic increments of progress including submittal of engineering plans, ordering of equipment after plan approval, installation date after confirmation of order by the manufacturer, and date by which the applicable regulatory emission limitation will be achieved after equipment is in satisfactory operation.

All compliance schedules based upon reformulation shall provide for periodic increments of progress including submittal of engineering plans, operating and maintenance procedures, schedules for research and development, purchase orders for reformulations, commencement and completion of process modifications, and date by which regulatory emission limitation will be achieved.

(b) Persons owning, leasing or controlling the operation at a specific site location of any individual or combination of coating lines described in 310 CMR 7.18(3) through 7.18(7), may for compliance with 7.18(2)(a) and the emission limitations contained in 310 CMR 7.18(3) through 7.18(7) submit a proposed plan containing a mix of emission limits for such coating lines such that the total emissions from all coating lines is less than or equal to the sum of emissions that would result from each individual coating line complying with the applicable emission limitation contained in 310 CMR 7.18(3) through 7.18(7). Submittal of such a proposed plan is subject to review and approval by the Department and must provide for compliance consistent with Section 7.18(2)(a).

(c) For the purposes of 310 CMR 7.18 in its entirety persons owning, leasing, or controlling any facility shall upon request of the Department perform or have performed, tests to determine compliance in accordance with methods approved by the Department under the provisions of 310 CMR 7.13.

(3) U Metal Furniture Surface Coating. No person owning, leasing, or controlling the operation of any metal furniture coating line shall cause, suffer, allow, or permit emissions therefrom in excess of those emission limitations set forth in the following table and within the time schedules specified in 310 CMR 7.18(2).

(7) **U Automobile Surface Coating.** No person owning, leasing, or controlling the operation of any automobile assembly plant shall cause, suffer, allow, or permit emissions therefrom in excess of those emission limitations set forth in the following table and within the time schedules specified in the following table.

Table 5
Emission Limitations
Automobile Surface Coating
U Volatile Organic Compounds

Emission Source	*Emission Limitations* Lbs. of volatile organic compounds per gallon of coating (excluding water) at application	*Compliance Date* Achieve Full Compliance with emission limitation
Prime application, flash off area, and oven	2.1	By July 1, 1979
	and 1.2	By December 31, 1982
Primer-surfacer application flash off area, and oven	3.0	By December 31, 1980
	and 2.8	By December 31, 1985
Topcoat application flash off area, and oven	5.8*	By December 31, 1979
	5.0*	By December 31, 1982
	and 2.8*	By December 31, 1985
Final repair application flashoff area, and oven	4.8*	By December 31, 1985

Analytical methods for comparison with these limitation must be conducted in accordance with ASTM D 1475-60, and/or ASTM D 1644- 59 (Method A only), and/or ASTM D 2369-73, and/or Federal Standard 141a, Method 4082.1, and/or any other method(s) which has been correlated to the above method(s) to the satisfaction of the Department.

* Compliance with these emission limitations shall be based upon an arithmetic average of topcoat coatings and final repair coatings.

b. Exhibit B: EPA, "Approval of Revisions to Compliance Schedules for Control of Volatile Organic Compounds from Automobile Assembly Plant Paint Shop Operations," 46 Fed. Reg. 51368 (1981)

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD, FRL 1860-6]

Approval of Revisions to Compliance Schedules for Control of Volatile Organic Compounds From Automobile Assembly Plant Paint Shop Operations

AGENCY: Environmental Protection Agency.

ACTION: Policy statement.

SUMMARY: On April 13, 1981, the Agency published a notice of intent to implement a number of actions to reduce the regulatory burden on the motor vehicle industry. Item 17 in this notice involved exploring with States the deferral of certain compliance dates for paint shop operations.

This notice establishes the criteria the Agency will apply in reviewing modifications to the existing State compliance schedules for these paint shop operations. States are advised that the Agency will consider the following types of revisions to their State Implementation Plan (SIP):

1. For electrophoretic deposition process (EDP) operations—compliance date extensions to 1984 to allow the postponement of significant capital expenditures; deferral up to 1987, if necessary, to implement alternative compliance techniques or if additional time will eliminate significant costs.

2. For prime-surfacer operations—deferral to follow installation of EDP.

3. For topcoat—deferral of compliance with topcoat emission limits until 1986/1987.

The Agency also commits to study in 1984 any specific problems which arise with these topcoat limits and, at that time, will provide additional information to the States for use in evaluating alternative emission limits which may be appropriate. Also, to resolve several areas of confusion in new source review, the Agency provides clarification that lowest achievable emission rate (LAER) and best available technology (BACT) determinations should recognize any innovative technology waivers that are granted and clarifies that offsets need not necessarily be required from a source if reasonable further progress toward attainment can be maintained.

FOR FURTHER INFORMATION CONTACT: John Calcagni, Control Programs Development Division (MD-15), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone: (919) 541-5663.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) has reviewed the impact of the implementation of regulations to control volatile organic compounds (VOC) from automotive assembly plant paint shop operations. The Agency has concluded that this delay may ultimately result in more cost-effective compliance with these limitations and, in most cases, can be implemented without jeopardizing the attainment of the ambient air quality standard for ozone by the statutory attainment date. EPA has discussed this policy with representatives of the affected States. Where States agree with the Agency's findings and submit revisions of their State Implementation Plans (SIPs) consistent with the criteria discussed below, the Agency will approve these schedules as being as expeditious as practicable. However, it should be noted that SIPs will need to assure continued compliance with the statutory portions of Sections 110 and 172 of the Clean Air Act. These revisions will need to be

evaluated in light of their impact on the overall plan and the individual elements, including emission reductions necessary to demonstrate reasonable further progress toward attainment of standards.

Electrophoretic Deposition Process

Most plants already have plans to install the electrophoretic deposition process (EDP) for priming of vehicles because of its contribution to improved product quality as well as emission control. The majority will be in place by 1982. However, the capital investment to convert from spray prime to this process is quite large (estimated to be $10-$20 million per facility and perhaps significantly greater for some specific situations). Of course, in some instances compliance may be accomplished with techniques or processes not requiring EDP.

Where significant capital expenditures can be deferred through the postponement of the installation of these systems for the next two years, the Agency would find such schedule changes appropriate. Allowing time for installation, the final compliance date generally should not be later than the end of 1984.

In a few specific circumstances such as a plant which is scheduled for renovation or closing in the next few years or a plant applying an alternative compliance technique, significant expense can be eliminated (not just postponed) by the deferral of the present compliance date. In cases where substantial costs can be eliminated, it would be appropriate to allow the auto industry to postpone these expenditures beyond 1984. The Agency does not expect any plant compliance schedule for the installation of EDP to extend beyond 1987.

Prime Surfacer

Where EDP is used, water-borne primer surfacer or its equivalent can be phased in. However, where conventional spray priming is used, some firms have experienced problems in obtaining the necessary quality level in the primer coating. Accordingly, in plants scheduled to install EDP, the deferral of the conversion to water-borne primer surfacer or its equivalent to follow the EDP installation should be considered appropriate.

Topcoat

The basis used to establish reasonably available control technology (RACT) for topcoating of automobiles and light trucks is the level of emission-control achievable through the use of a water-borne coating. This is generally acknowledged to be a coating with 2.8 lb/gal solvent (less water) applied with a transfer efficiency of 30 percent. Because of the costs of retrofitting a plant to this technology and numerous product-related decisions, most automotive firms are pursuing alternative techniques to achieve an equivalent level of emission control. These include combinations of: improved transfer efficiency, coatings with higher solids content (less solvent), collection and recovery of spray booth emissions, and the installation of incinerators and/or heat recovery features on the exhaust gases from the curing ovens. The most desirable combination of these control techniques will vary from plant to plant. However, it now appears that the most cost-effective approach will always include use of a higher solids organic solvent coating (rather than a water-borne) when it can be incorporated without extensive facility modification.

Although coatings with the requisite solids content have not yet been fully commercialized, significant development efforts are underway to lower the solvent content of coatings in use. The Agency expects that the further development which will take place during the next few years will allow the industry to minimize or avoid altogether the need to rely on non-coating alternatives to achieve water-borne equivalence. Accordingly, EPA will approve any State-submitted schedule modifications which postpone final compliance with the emission limits for topcoat oper-

ations to the end of 1986 to allow for further development of coating technology. Such delays will allow more cost-effective compliance techniques to be used. In order to follow an orderly implementation effort nationally, some plants are expected to need until 1987 to achieve final compliance. States should consider these requests in light of the individual States circumstances.

A segment of the industry has expressed concern with the significant cost of add-on control equipment which would be required should this coating technology not be commercialized prior to the final compliance date. While there is a significant basis for confidence that appropriate coatings will be available in a timely fashion, the Agency will continue to monitor the applicability of this technology to individual industry situations. Should problems arise, the Agency will reconsider the available technology prior to the end of 1984 in light of industry capabilities at that time.

The industry is also concerned with the expense of incorporating this new coating technology in plants which now have relatively short ovens and spray booths. The application of RACT in such plants will need to recognize on a case-by-case basis the cost imposed by such physical limitations. The Agency does not interpret that RACT requires major reconstruction of ovens or booths. If use of water-borne coatings (or equivalent emission control) cannot be achieved without major reconstruction, then RACT should be interpreted as the use of the highest solids coatings and the highest available transfer efficiency appropriate for the facility. Since new low-emitting coatings are now being developed, additional information will be available by 1984 upon which to base modifications to emission limitations for topcoat operations at plants with relatively short ovens and spray booths. The Agency will work with States to address this circumstance as part of the evaluation of coating technology discussed above.

Between now and 1986 a significant number of existing plants will be making major modifications to meet product needs. The Agency does not recommend that States impose interim emission limitations at these facilities. Rather, the industry should be permitted to concentrate on compliance with ultimate emission limits. Efforts should be made, however, to assure that the facilities do not increase emissions in this interim period and that any major modifications made to the physical plant incorporate in the design the capability for the plant to subsequently adopt the new low solvent coatings in the 1986 time period. Specifically, plants which propose to alter their spray-booths and ovens to accommodate the basecoat/clear coat paint system or other technology should be required to assure that such modifications will permit subsequent adoption of the new generation of low solvent coatings.

New Source Review

There are two new source review (NSR) procedures which may be applicable to an individual surface coating operation renovation: standards of performance for new stationary sources required under Section 111 of the Act (NSPS) and preconstruction review requirements under either Part C or D of the Act. Based on the discussion below, the proposed schedules for applying clear coating which meet the SIP criteria discussed in this notice can also be allowed within the regulatory options allowed to the reviewing authority under NSR.

Section 111(j) of the Act allows EPA with the consent of the Governor of the State to grant waivers from the applicable NSPS if any requested waiver would meet certain tests. Based on section 111(j) criteria, the Agency expects to evaluate individual company requests for waivers to allow the use of basecoat/clear coat systems. Thus, if a section 111(j) waiver is granted, new basecoat/clear

coat operations will generally not have to meet the applicable NSPS upon startup.

The phased use of clear coat when it takes place at a new plant in a clean air area is subject to Part C preconstruction review. Where no new violations of the NAAQS would result from the construction of the new automotive plant and the BACT requirement is met by innovative control technology waiver, the Administrator believes that construction of new plants developing basecoat/clear coat technology should not be barred by PSD.

Part D of the Clean Air Act affects major construction projects in areas designated as nonattainment and with approved SIPs which demonstrate attainment by the prescribed time. The requirements of this preconstruction review are identified in section 173. Clarification is needed as to how two of the major requirements of section 173 can be met by new plants using basecoat/clear coat technology. These requirements are that any proposed major construction install controls so as to meet the lowest achievable emission rate (LAER), and secure sufficient emissions offsets so as to not jeopardize reasonable further progress in attaining the applicable NAAQS.

For those construction projects that would be subject to Part D NSR, the proposed evolution of clear coating technology appears to meet the intent of the LAER requirement. The Administrator feels that any system which offers the potential of providing greater emission reductions at less cost than current LAER technology should be encouraged. Thus, EPA would encourage any State LAER decision allowing for the evolution of clear coating technology which is consistent with the conditions of the 111(j) waiver.

While the State must also require the proposed source to secure enough offsetting emission reductions so that reasonable further progress (RFP) is maintained, the State has considerable flexibility in ensuring that RFP will be

achieved. The State has the option of accommodating any or all of the emissions from the new plants by emissions reductions achieved through the allocation of expected reductions from existing plants in the same area. For example, the State could require the new plant to offset only those emissions which will occur after the clear coating technology is in place and assure RFP by applying reductions obtained from other sources in the area during the phase-in period for this technology.

Under Executive Order 12291, EPA must judge whether a rule is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not Major because it is not expected to result in increased costs for the regulated community or for consumers. This action provides States information on the approvability of the extension of certain compliance schedule dates for automobile assembly plant paint shop operations.

This policy statement was submitted to the Office of Management and Budget for review under Executive Order 12291.

Dated: October 9, 1981.

Anne M. Gorsuch,

Administrator.

[FR Doc. 81-30433 Filed 10-19-81; 8:45 am]

c. Exhibit C: Letter from David M. Aldorfer to Kenneth A. Hagg (November 20, 1984)

[GM Square Logo]

Environmental Activities Staff
General Motors Corporation
General Motors Technical Center
30400 Mound Road
Warren, Michigan 48090-9015

November 20, 1984

Mr. Kenneth A. Hagg, Director
Division of Air Quality Control
Department of Environmental Quality Engineering
The Commonwealth of Massachusetts
One Winter Street
Boston, MA 02108

Re: General Motors-Framingham Plant VOC Compliance Plan

Dear Mr. Hagg:

Volatile organic compound emissions from automobile surface coating operations at the General Motors-Framingham plant are regulated under Massachusetts 310 CMR 7.18(7). This regulation includes organic solvent content limits of 2.8 lb VOC per gallon (minus water) for topcoat and 4.8 lb VOC per gallon for final repair coatings, both to be met by December 31, 1985.

The purpose of this letter is to propose an abatement program to achieve equivalent levels of emission control, instead of making the major process changes to entirely different coating materials that would be required to comply with these limits directly. To accomplish this program, General Motors requests the cooperation of the Department of Environmental Quality Engineering by amending 310 CMR 7.18(7) to extend the final compliance dates for these two operations from December 31, 1985 to December 31, 1987, and by establishing alternative increments of progress for this program, as follows:

Submit engineering plans	8/1/85
Order equipment	9/16/85
Begin construction	1/15/86
Achieve final compliance	12/31/87

As described in the attachment, the program includes both spraybooth and oven exhaust controls. Incinerators will be in place on the primer-surfacer oven by the end of 1985. This will make the primer-surfacer operation compliant with the RACT emission limit for this process by December 31, 1985, as required in 310 CMR 7.18(7). Installation of oven exhaust controls in the topcoat system, which is the first necessary element in reducing VOC emissions to meet the topcoat RACT standard, will be complete by the end of 1986. The increments of progress proposed above are keyed to the spraybooth controls that will also be needed to achieve compliance in the topcoat system.

General Motors proposes to retain lacquer repair coatings, in order to maintain compatibility with the topcoat materials, and to reduce mass VOC emissions from the topcoat system by enough to include the increment that would correspond to meeting the 4.8 lb VOC per gallon limit in the final repair process. Lacquer repair coatings cannot be formulated to meet the 4.8 lb VOC per gallon limit for this process, which is based on enamel repair materials.

In the interim, General Motors proposes to meet a 5.2 lb VOC per gallon limit for topcoat, and 6.5 lb VOC per gallon for final repair, both of which represent arithmetic averages across the color range of the coatings now in use.

The attached document explains in greater detail the rationale for the proposed abatement program and the need for additional time to complete it. We will be pleased to meet with you and your staff to discuss this proposal, and would like to suggest December 12 or 13, 1984, if your

schedule permits. Please call me at 313-575-8609 to let me know if one of these dates is acceptable, or if another would be preferable.

Thank you for your attention to this request.

Very truly yours,

/s/ David M. Aldorfer
David M. Aldorfer
Manager, Air Pollution Control
GM Environmental Activities Staff
Plant Environment

cc:Michael Maher

d. Exhibit D: Letter from D.M. Aldorfer to James Belsky (June 7, 1985)

[GM Square Logo]

Environmental Activities Staff
General Motors Corporation
General Motors Technical Center
30400 Mound Road
Warren, Michigan 48090-9015

June 7, 1985

Mr. James Belsky
Commonwealth of Massachusetts
Department of Environmental Quality Engineering
Division of Air Quality Control
5 Commonwealth Avenue
Woburn, MA 01801

Dear Mr. Belsky:

Since our meeting of January 4 to discuss the abatement program that we had proposed for the General Motors Framingham Assembly Plant, a total re-evaluation of the plant's situation has occurred. This has led to a major change in the manner in which GM proposes to comply with the VOC emission limits for topcoat and final repair operations. General Motors now is planning to replace the current lacquer topcoat and final repair systems with new facilities to use basecoat/clearcoat enamel coatings as the compliance strategy, rather than abating the current lacquer system.

The new paintshop will enable the plant to produce vehicles with a finish quality competitive in today's world market, and is consistent with the trend in the entire domestic auto industry to adopt the basecoat/clearcoat process. Further, it is consistent with the rationale expressed in the October 20, 1981 U.S. EPA policy statement regarding the extension of original topcoat compliance dates for the purpose of developing and introducing new coating technology, thereby minimizing or avoiding the need for non-coating alternatives.

To accomplish this program and demonstrate compliance, major construction of new paint facilities is required, which is expected to take 31 months to complete. Thus, the necessity for the extension of the current compliance dates for topcoat and final repair operations from December 31, 1985 to December 31, 1987, as previously requested, remains. After discussing the project scope and timing with you, we will develop and submit new dates for increments of progress appropriate for this program.

In the interim, General Motors proposes to meet a 5.2 lb VOC per gallon limit for topcoat, and 6.5 lb VOC per gallon for final repair, both of which represent arithmetic averages across the color range of the coatings now in use.

The following information is provided to demonstrate that using topcoat materials that average 5.2 lb VOC per gallon, in conjunction with the spray efficiency improvement from installing automatic electrostatic spray equipment, does not result in emissions exceeding the equivalent of the 5.0 lb VOC per gallon interim emission limit.

The interim limit of 5.0 was proposed by GM in its 1978 national paint compliance plan, to represent a nominal 27 percent volume solids lacquer chemistry. This value was based on information then available about this coating chemistry, which was still in development, and not in production use, at that time. In production use, average VOC for this generic type of dispersion lacquer is about 0.2 lb per gallon higher. For this evaluation, data from Dupont, one of the three major suppliers of dispersion lacquer, was used. Information supplied for 1984 model year colors showed an average of 5.22 lb VOC per gallon/26 percent volume solids. Compared on the basis of lb VOC per gallon of solids, these parameters indicate about 9 percent higher average VOC than the 5.0/.27 ratio - 20.1 vs 18.5.

The offsetting effect of the spray efficiency improvement can be evaluated by comparing topcoat usage per car before and after the conversion to electrostatic spray equipment. The reduction in solvent emission potential is directly proportional to the reduction in exterior paint usage, expressed in average gallons per car.

Average usage per car is tracked by the plant on a monthly basis. It varies slightly from month to month, but was running about 2.4 gallons per car for exterior coatings at the Framingham plant before the automatic electrostatic spray machines were installed. Since the conversion, experience ranges from 2.06 to 2.15, or an apparent reduction in the range of 11 to 14 percent. This reduction more than offsets the 9 percent higher emission potential for the 5.22 average VOC content.

Since variations in monthly average coating usage per car can reflect changes in other factors besides transfer efficiency, such as slight variations in dry paint film thickness, it is useful to estimate the reduction in paint usage at constant film thickness, and then to compare the result to the reduction noted in average monthly usage per car. This gives a cross check on the results of the first method.

This cross check was done by using a mathematical model of the topcoat system to estimate the gallons of paint sprayed hourly. All factors were held constant, except the values of transfer efficiency for the automatic spray machines involved in the conversion. A value of 65 percent was used to represent the electrostatics now in use, versus 45 percent to represent the air-atomized spray machines replaced by the electrostatics. The model weights the effect of these devices in with all the other spray equipment in the topcoat process, according to the volume of paint solids applied hourly with each type of spray equipment.

Hourly paint consumption estimated in this way was 144 gallons with the electrostatics, and 162 gallons with the previous conventional air spray machines. The difference

is 12 percent, which compares reasonably well with the savings observed so far in monthly average paint usage per car.

The results of this model also were used to estimate weighted average transfer efficiency for the entire topcoat process. This is the ratio of the volume of coating solids applied to a product to the volume of coating solids consumed in the process.

Ratioing the volume of applied topcoat solids versus the two volumes of solids sprayed, first with and then without the automatic electrostatics, yields weighted average transfer efficiences of 45 percent and 40 percent respectively. The latter value represents the baseline for translating the 5.0 lb VOC per gallon interim limit into an equivalent expression in lb VOC per gallon of applied coating solids. Dividing 5.0 first by the volume fraction solids (0.27) and then by baseline transfer efficiency (0.4) yields an equivalent of 46.3 lb VOC per gallon of applied solids. Using the same technique, 5.22/0.26 coatings sprayed at 45 percent transfer efficiency yields 44.6, which again shows that the improved spray efficiency offsets the higher VOC level.

It is necessary to use these comparisons, because there are no field measurements of Framingham topcoat transfer efficiency before and after converting to the automatic electrostatics. The validity of the model is supported by comparing the overall efficiency it predicts for Framingham with measured results from the Fairfax, Kansas plant, which also uses dispersion lacquer and automatic electrostatics in its topcoat process. Fairfax results were in the 48-53 percent range, spraying a longer and wider car body, with proportionally larger body surface areas being sprayed electrostatically. Better efficiency is expected because of the larger target areas at Fairfax for its electrostatics. Considering the size difference between the cars, the Framingham transfer efficiency seems reasonable in comparison.

While none of these comparisons might be conclusive by themselves, together they support a level of paint and emissions savings via improved transfer efficiency that offsets the difference between 5.2 and 5.0 lb VOC per gallon in the topcoat. On this basis, General Motors believes there is adequate justification to consider the present system compliant on an equivalent basis with the 5.0 limit.

We would appreciate the opportunity to meet with you soon to discuss this program in detail. I will call to arrange a mutually satisfactory date.

Sincerely,

/s/ David M. Aldorfer
D. M. Aldorfer
Manager, Air Pollution Control
Environmental Activities Staff

e. Exhibit E: Commonwealth of Massachusetts, Department of Environmental Quality Engineering, Division of Air Quality Control, "Amendments to Regulation 310 CMR 7.18(7)" (December 30, 1985)

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Quality Engineering
Division of Air Quality Control
One Winter Street, Boston 02108

S. RUSSELL SYLVA
Commissioner

December 30, 1985

Honorable Michael Joseph Connolly
Secretary of the Commonwealth
State House
Boston, Massachusetts 02133

Dear Secretary Connolly:

Attached for filing, in compliance with General Laws, Chapter 30A, are two attested copies of an amendment to this Department's Air Pollution Control Regulations, 310 CMR 7.18(7), which are being promulgated pursuant to the authority granted by General Laws, Chapter 111, Section 142 A - 142 E.

This amendment is to take effect January 1, 1986.

I hereby attest that the attached are true copies of this amendment.

Very truly yours,

/s/ Bruce K. Maillet
Bruce K. Maillet
Acting Director
Division of Air Quality Control

BKM/EVR/ch

THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
ENGINEERING DIVISION OF AIR QUALITY CONTROL
ONE WINTER STREET
BOSTON, MASSACHUSETTS 02103

AMENDMENTS TO
REGULATION 310 CMR 7.18(7)

FOR

THE CONTROL OF AIR POLLUTION

IN THE

BERKSHIRE AIR POLLUTION CONTROL DISTRICT
PIONEER VALLEY AIR POLLUTION
CONTROL DISTRICT
MERRIMACK VALLEY AIR POLLUTION
CONTROL DISTRICT
METROPOLITAN BOSTON AIR POLLUTION
CONTROL DISTRICT
CENTRAL MASSACHUSETTS AIR POLLUTION
CONTROL DISTRICT
SOUTHEASTERN MASSACHUSETTS AIR POLLUTION
CONTROL DISTRICT

REGULATORY AUTHORITY:

M.G.L. C. 111, Section 142A-142E

Please note:

310 CMR 7.13 is hereby amended by striking out the Compliance Dates for Topcoat application and Final repair application (December 31, 1985) and inserting in place thereof the date August 31, 1987.

The changes to the regulation are identified by **bold print.** 310 CMR *7.13: U Volatile Organic Compounds*

(7) *U Automobile Surface Coating.* No person owning, leasing, or controlling the operation of any automobile assembly plant shall cause, suffer, allow, or permit emissions therefrom in excess of those emission limitations set forth in the following table and within the time schedules specified in the following table.

Table 5
Emission Limitations
Automobile Surface Coatings

U Volatile Organic Compounds

Emission Source	Emission Limitations Lbs. of volatile organic compounds per gallon of coating (excluding water) at application	Compliance Date Achieve full Compliance with emission limitation
Primer application flash off area, and oven	2.1 and 1.2	By July 1, 1979 By December 31, 1982
Primer-surfacer application, flash off area, and oven	3.0 and 2.3	By December 31, 1980 By December 31, 1985
Topcoat application flash off area, and oven	5.3* 5.0* and 2.8*	By December 31, 1979 By December 31, 1982 By **August 31, 1987**
Final repair application flash off area, and oven	4.8*	By **August 31, 1987**

* *Note:* Compliance with these emission limitations shall be based upon an arithmetic average of topcoat coatings and final repair coatings.

The Department may issue such orders and establish such interim deadlines that it deems necessary.

f. Exhibit F: Letter from S. Russell Sylva to Michael Deland (with attachments) (December 30, 1985)

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Quality Engineering
One Winter Street, Boston 02108

S. RUSSELL SYLVA
Commissioner

December 30, 1985

Michael Deland
Administrator, Region I
Environmental Protection Agency
J.F.K. Federal Building
Boston, Massachusetts 02203

Re: Approval of Revisions to
Massachusetts Implementation
Plan. SIP #8502
310 CMR 7.18(7)

Dear Mr. Deland:

The Department of Environmental Quality Engineering hereby submits for your review amendments to 310 CMR 7.18(7) of the Massachusetts Air Pollution Control Regulations.

The amendment to the regulations will allow the General Motors facility in Framingham more time for installation of new topcoating technology. The SIP revision allows the existing topcoat and final repair operations to continue while the paintshop that will house the new basecoat/clearcoat topcoating operation is constructed. A permit will be issued to allow the installation of the new low emission topcoating operation.

The Division of Air Quality Control respectfully submits for your approval amendments to 310 CMR 7.18(7) of the

Regulations for Control of Air Pollution in the Berkshire, Central Massachusetts, Merrimack Valley, Metropolitan Boston, Pioneer Valley, and Southeastern Massachusetts Air Pollution Control Districts.

The Division encloses for your consideration the following:

1. A copy of the public notice.
2. A certification:
   a. that the public hearing was held in accordance with the public hearing requirements,
   b. of the dates that the public notices were published,
   c. of the newspapers in which the notices were published,
   d. of the dates on which notices to EPA, local and out-of-state air pollution agencies were mailed,
   e. of the date, time and place at which the public hearing was held, together with a statement that it was in conformance with the foregoing notices.
3. A summary of written and oral testimony presented at the public hearing and a copy of the written testimony.
4. A copy of the recommendations of the Director of the Division of Air Quality Control to the Commissioner of the Department of Environmental Quality Engineering regarding this regulatory revision (Decision Memorandum dated December 30, 1985)
5. A copy of the Support Document for the proposed regulation amendment.

Unedited tape recordings of the hearings are available for inspection by the Environmental Protection Agency.

The Department of Environmental Quality Engineering is of the opinion that this action is in conformance with

the provisions of the Clean Air Act, has been adopted after compliance with all applicable requirements and will contribute to the attainment and maintenance of the National Ambient Air Quality Standards.

It is therefore recommended that the amendments to 310 CMR 7.18(7) of the Regulations for Control of Air Pollution in the Berkshire, Central Massachusetts, Merrimack Valley, Metropolitan Boston, Pioneer Valley, and Southeastern Massachusetts Air Pollution Control Districts be approved as a revision to the Massachusetts State Implementation Plan.

Very truly yours,

/s/ [illegible signature]
S. Russell Sylva
[Acting] Commissioner

SRS:EVR:dep
Enclosures

The Commonwealth of Massachusetts
Secretary of State

REGULATION FILING AND PUBLICATION

1. REGULATION CHAPTER NUMBER AND HEADING: 310 CMR 7.18(7): Air Pollution Control Regulations
2. NAME OF AGENCY: Department of Environmental Quality Engineering
3. READABLE LANGUAGE SUMMARY: State the general purposes and requirements of this regulation as well as the process, organizations and businesses affected.

   The amendment to the regulations will allow the General Motors facility in Framingham more time for installation of new low-emission topcoating technology.
4. AGENCY CONTACT FOR ADDITIONAL INFORMATION: Karen Reed Address: Division of Air Quality Control, DEQE Telephone 229-5630 One Winter Street, 8th Floor, Boston, MA 02108
5. STATUTORY AUTHORITY: M.G.L. c. 111 s. 142A-142E The Regulations Division will complete the following 6. and 7.
6. PUBLICATION: Massachusetts Register Number _____ Date _____ Code of Massachusetts Regulation Volume _____ Page_____
7. EFFECTIVE DATE:_____
8. FISCAL EFFECT STATEMENT Section 5: Estimate of the fiscal effect of this regulation including that on the public and private sector, for the first and second year, and a projection over the five-year period, or a statement of no fiscal effect:

   No fiscal effect to either the public or private sector
9. PUBLIC HE RING OR COMMENT:

   Section 2 _ _ Date(s) of public hearing 12/16/85

Section 3 _x_ Date(s) of public comment same: as above

Emergency ss. 2 or 3_____ State the nature of the emergency:_____

10. PUBLICATION OF NOTICE
Was notice of this regulation filed with the State Secretary, published in appropriate newspapers and sent to persons to whom specific notice must be given 21 days prior to the public hearing or agency action?

Yes

11. If prior approval of and/or notification to the governor, legislature or others was required for this regulation list each approval and the date: (Include here notice to the Governor's Management Task Force and the Local Government Advisory Committee)

No prior approvals or notification required

12. State how the regulation adds, supersedes, amends or deletes regulations already on file with the State Secretary, including the most recent effective date.

Amends 310 CMR 7.18(7) by striking out the compliance dates for topcoat application, and final repair application and inserting in place the date August 31, 1987.

This is effective 01/01/86

DEPARTMENT OF ENVIRONMENTAL QUALITY
ENGINEERING DIVISION OF AIR QUALITY CONTROL

NOTICE

Notice is hereby given that the Department of Environmental Quality Engineering, acting in accordance with the provisions of M.G.L. Chapter 111, Section 142A through 142D, and in conformance with the Clean Air Act as amended August 7, 1977 will hold a public hearing on the following proposed matters, to be applicable to all Districts.

It is proposed to amend regulation 310 CMR 7.18(7) Automobile Surface Coating and the 1982 State Implementation Plan for ozone and carbon monoxide by extending the compliance dates for the topcoat and final repair operations from December 31, 1985 to December 31, 1987. This amendment affects the General Motors Automobile Surface Coating facility in Framingham, Massachusetts.

In addition, the Department proposes conditional approval of General Motors application to construct an addition to the existing facility. The new operation is subject to Lowest Achievable Emission Rate (LAER) and the emissions from the new facility must be balanced by equivalent emission reductions (offsets) such that a net air quality benefit is secured.

The public hearing will be conducted under the provisions of N.G.L. Chapter 30A on:

December 16, 1985—Woburn—1:00 P.M.

Department of Environmental Quality Engineering

3 Commonwealth Avenue, Woburn—Conference Room.

Testimony may be presented orally and/or in writing no later than the conclusion of the public hearing. Parties are requested to submit *four* written copies of their testimony at the hearing.

Copies of the proposed regulation amendment and background information will be available for inspection at the Division of Air Quality Control, 8th Floor, One Winter Street, Boston, Massachusetts, at the Merrimack Valley and Boston Air Pollution Control Districts, 5 Commonwealth Avenue, Woburn, Massachusetts, at the Berkshire and Pioneer Valley Air Pollution Control District, State House West 436 Dwight Street, Springfield, Massachusetts, at the Central Massachusetts Air Pollution Control District, 75 Grove Street, Worcester, Massachusetts and at the Southeastern Massachusetts Air Pollution Control District, Lakeville Hospital, Lakeville, Massachusetts.

By Order of the Department.

S. Russell Sylva
Commissioner

THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING

DIVISION OF AIR QUALITY CONTROL

ONE WINTER STREET

BOSTON, MASSACHUSETTS 02108

PROPOSED AMENDMENTS TO REGULATION 310 CMR 7.18(7)

FOR

THE CONTROL OF AIR POLLUTION

IN THE

BERKSHIRE AIR POLLUTION CONTROL DISTRICT

PIONEER VALLEY AIR POLLUTION CONTROL DISTRICT

MERRIMACK VALLEY AIR POLLUTION CONTROL DISTRICT

METROPOLITAN BOSTON AIR POLLUTION CONTROL DISTRICT

CENTRAL MASSACHUSETTS AIR POLLUTION CONTROL DISTRICT

SOUTHEASTERN MASSACHUSETTS AIR POLLUTION CONTROL DISTRICT

REGULATORY AUTHORITY:

M.G.L. C. 111, Section 142A - 142D

NOVEMBER, 1985

Please Note:

Proposed changes to the regulation are identified by bold print

310 CMR *7.18: U Volatile Organic Compounds*

(7) *U Automobile Surface Coating.* No person owning, leasing, or controlling the operation of any automobile assembly plant shall cause, suffer, allow, or permit emissions therefrom in excess of those emission limitations set forth in the following table and within the time schedules specified in the following table.

Table 5
Emission Limitations
Automobile Surface Coatings

U Volatile Organic Compounds

Emission Source	Emission Limitations Lbs. of volatile organic compounds per gallon of coating (excluding water) at application	Compliance Date Achieve full Compliance with emission limitation
Primer application, flash off area, and oven	2.1 and 1.2	By July 1, 1979 By December 31, 1982
Primer-surfacer application flash off area, and oven	3.0 and 2.3	By December 31, 1980 By December 31, 1985
Topcoat application flash off area, and oven	5.3* 5.0* and 2.8*	By December 31, 1979 By December 31, 1982 By **December 31, 1987**
Final repair application, flash off area, and oven	4.8*	By **December 31, 1987**

* *Note:* Compliance with these emission limitations shall be based upon an arithmetic average of topcoat coatings and final repair coatings.

CERTIFICATION

I hereby certify that notices of public hearings were published on the following dates in the following newspapers:

The Boston Herald (Boston)	November 15, 1985
Middlesex News (Framingham)	November 16, 1985
Worcester Gazette (Worcester)	November 16, 1985
Morning Union (Springfield)	November 13, 1985
Cape Cod Standard Times (Hyannis)	November 16, 1985
Lawrence Eagle Tribune (Lawrence)	November 16, 1985

I further certify that the notices specified the date, time, and place of the public hearing to be held on the proposed amendment of 310 CMR 7.18(7) and revise the 1982 State Implementation Plan for ozone and carbon monoxide as well as the proposed conditional approval of General Motors application to construct an addition to the existing facility in Framingham, Massachusetts. I also certify that the notices specified the locations at which the proposed regulation amendments, etc., together with supporting information, was available for public inspection. I also certify that the proposed regulation revisions and supporting information was available at the locations stated in the notice when the notices were published as well as at the location and date of the public hearing. I further certify that similar notices were mailed on or before November 18, 1985 to the Environmental Protection Agency, to any affected local or pollution control agencies, and to all known potentially interested parties.

I further certify that on the following date and at the following place a hearing was conducted by the Massachusetts Department of Environmental Quality Engineering, pursuant to the above notices and in conformance with the provisions of 30 C.F.R. 51.4(b):

December 16, 1985—Woburn—1:00 p.m. Department of Environmental Quality Engineering, 5 Commonwealth Avenue, Woburn, MA—Conference Room

Attest: /s/ Ellen V. Robertson
Ellen V. Robertson
Acting Hearing Officer

EVR:dep

DEPARTMENT OF ENVIRONMENTAL QUALITY ENGINEERING

DIVISION OF AIR QUALITY CONTROL

Summary of Written and Oral Testimony
Presented at the Public Hearing for the Proposed:

- Amendment to Regulation 310 CMR 7.18(7) Automobile Surface Coating (extending compliance deadline for topcoat and final repair operations)
- Revisions of the 1982 State Implementation Plan for Ozone and Carbon Monoxide
- Conditional Approval of General Motors' New Paint Shop Application and Offset Requirements (310 CMR 7.00 Appendix A)

The Public Hearing Was Conducted Under the Provisions of MCL Chapter 30A on:

December 16, 1985—Woburn—1:00 pm
Department of Environmental Quality Engineering
5 Commonwealth Ave., Woburn—Conference Room

December, 1985

The Department received written and oral testimony from:

- U.S. Environmental Protection Agency, State Air Progress Branch (Linda Murphy)
- General Motors, Framingham Plant (Ronald Boyd)
- American Lung Association (Michael Ellenbecker)

In response to the proposed amendment to 310 CMR 7.18(7) and revision of the 1982 State Implementation Plan for Ozone and Carbon Monoxide:

- EPA did not oppose the proposed amendment and revision, but had reservations because GM's request

for an extension of two years for its compliance deadline makes no attempt to limit emissions during the extension, nor does it contain any guarantees that the new basecoat/clearcoat line will result in better controls than RACT controls on the old line.

- GM requested approval of the proposed amendment and revision.
- The American Lung Association found the compliance deadline extension acceptable, however it questioned the date that building construction is to begin, expressing concern that construction not begin until the necessary permits are issued, and that GM be required to document interim progress.

In response to the proposed conditional approval of GM's new paint shop application and offset requirements:

- EPA did not oppose this approval but gave a list of areas that the Department should address before a new source review permit is issued, and a list of conditions that should be specified as legally enforceable in the new source review permit as required in the Clean Air Act (Section 173). (These specific issues are discussed in the Response to Testimony.)
- GM requested approval of the application and offset requirements. GM's written testimony contains corrections and clarifications to the Department's November 15, 1985 letter which contained the data and findings used as the basis for its proposal to grant conditional approval.
- The American Lung Association did not oppose the approval, but expressed concern about how the Department is calculating and crediting the offsets. While they believe that stationary sources should be required to locate offsets from other stationary sources, not mobile sources, they do realize that

the predominance of hydrocarbon emissions in Massachusetts (and therefore the available source of offsets) is from mobile sources. They listed a number of questions about the use of emissions reductions calculated from the first nine months that the I/M program was in place (discussed in the Response to Testimony). They asked that the Department not adopt the proposed amendments until these questions are adequately addressed.

Department comment:

- The SIP revision will be extending the compliance date for the topcoating and final repair operations until August 31, 1987. The hearing notice had a proposed compliance deadline of December 31, 1987. As GM has committed to August 31, 1987 for shutting down existing topcoating operations, the regulation will only be extended to August 31, 1987.

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Quality Engineering
Division of Air Quality Control
One Winter Street, Boston 02108

S. RUSSELL SYLVA
Commissioner

MEMORANDUM

TO: S. Russell Sylva

THRU: Thomas F. McLoughlin

FROM: Bruce K. Maillet

DATE: December 30, 1985

SUBJECT: Decision Memorandum—Regulatory Changes to Sections to 310 CMR 7.18(7) and New Source Review Permit for the General Motors Automobile Surface Coating Facility in Framingham, Massachusetts.

PURPOSE:

By extending the regulation compliance date for the topcoating operations, the proposed amendment to the regulation will allow the General Motors plant more time for installation of new topcoating technology. The SIP revision allow existing topcoat operations to continue as is while the paint shop that will house the new basecoat/clearcoat topcoating operations is constructed.

BACKGROUND

The Department is making one change to its regulations. That change applies to 310 CMR 7.18(7) Automobile Surface Coating. The change would extend the compliance dates for the topcoat and final repair operations from December 31, 1985 to August 31, 1987. This change in the regulations shall be submitted to EPA as a revision to the

State Implementation Plan for Ozone and Carbon Monoxide.

In addition, the Department has conditionally approved General Motors application to construct an addition to the existing facility. The addition will replace equipment currently used in the coating operation with improved technology. The new operation is subject to Lowest Achievable Emission Rate (LAER) and the emissions from the new facility have been balanced by equivalent emission reductions (offsets) for a net benefit to air quality.

MAJOR ISSUES

The Department received testimony from the General Motors Corporation, EPA and the American Lung Association. Testimony received was generally supportive of both the proposed amendment to the regulation and the permit for the new paintshop.

EPA had several questions which they felt the Department should address prior to issuance of the New Source permit. These specific issues are addressed in the Response to Testimony.

American Lung Association questioned the source of the offsets used in the New Source Permit review. This too was addressed in the Response to Testimony.

AIR QUALITY IMPACTS/RESOURCE ESTIMATE

The effect of the amendments is to allow additional time to the General Motors Facility for installation of new technology which will have an ultimate benefit to air quality. The addition to the facility in Framingham will not adversely affect the ability of the Department to demonstrate a 35% reduction in volatile organic emissions by the year 1987.

It is estimated that the regulation changes and permit will require minimal Department personnel resources per

year. The resources that will be required will be devoted to enforcement of the regulation and permit.

PUBLIC PARTICIPATION

The Department published public notice providing the opportunity to review technical support documentation thirty days prior to the public hearing on December 15, 1985.

COMPLIANCE WITH MEPA:

This project is "categorically exempt" from the "Regulations Governing the Preparation of Environmental Impact Reports" because the proposed regulations will not reduce existing levels of emission control. All reasonable measures have been taken to avoid or minimize adverse impacts.

RECOMMENDATION:

I recommend that the proposed amendment to 310 CMR 7.18(7) of the Regulations for the Control of Air Pollution to the Berkshire, Central Massachusetts, Merrimack Valley, Metropolitan Boston, Pioneer Valley, and Southeastern Massachusetts Air Pollution Control Districts be adopted as a revision to the Massachusetts State Implementation Plan.

Legal Office:

Concur: _____ Date: _____

Deputy Commissioner:

Concur: _____ Date: _____

Acting Commissioner:

Concur: [signature illegible] Date: 12-31-85

EVR:dep

BACKGROUND INFORMATION
AND
TECHNICAL SUPPORT
FOR
PUBLIC HEARINGS
ON
PROPOSED AMENDMENTS

TO

310 CMR 7.18(7) and
Requirements of
310 CMR 7.00 Appendix A

Of the Regulations
for the
Control of Air Pollution
in the

Berkshire Air Pollution Control District
Central Massachusetts Air Pollution Control District
Merrimack Valley Air Pollution Control District
Metropolitan Boston Air Pollution Control District
Pioneer Valley Air Pollution Control District
Southeastern Massachusetts Air Pollution Control District

November, 1985

Proposal

The Department of Environmental Quality Engineering proposes to amend 310 CMR 7.18(7), *Automobile Surface Coating*, by extending the compliance deadline listed in Table 3 for the topcoat and final repair applications. Specifically, the final compliance date of December 31, 1985 will be extended to December 31, 1987. This will be a

revision to the Massachusetts State Implementation Plan (SIP).

Affected Sources

This amendment to 310 CMR 7.18(7), *Automobile Surface Coating,* will affect one source in the Commonwealth, General Motors (GM) in Framingham.

Compliance Status

The existing operations at the General Motors Facility are subject to 310 CMR 7.18(7), *Automobile Surface Coating.* This regulation pertains to specific coating operations such as the primer, primer surfacer, topcoat and final repair processes. The regulation sets a limit of pounds of volatile organic compounds (VOC) per gallon of coating (excluding water) and interim and final dates to meet the particular limits for each operation. The earliest date was July 1, 1979 and the final date is December 31, 1985. The interim dates are important to assure that progress is being made toward achieving the final requirements.

GM—Compliance History

The emission limits and compliance dates in the Environmental Protection Agency's (EPA) Control Techniques Guideline for automobile surface coating as adopted by Massachusetts were derived as part of a national compliance plan with input from General Motors in the late 1970's. States' acceptance of this plan made it possible for GM to phase in compliance for the one-hundred plus coating operations affected by these rules over an eight year period ending in 1987 (rather than 1982).

The 1977 amendments to the Clean Air Act had changed the deadlines for compliance with the air quality standards to December 31, 1982. There were provisions in the law allowing areas with ozone problems to obtain extensions from the 1982 deadline until December 31, 1987. Massachusetts received an extension.

The extra time was important because GM was able to concentrate on converting primer systems to a waterborne electrodeposition process and also to reduce the VOC content of the lacquer topcoat materials.

[The Framingham plant met all interim RACT deadlines with an electrodeposition primer system and high solids primer-surfacer with electrostatic spray guns and the dispersion lacquer topcoat operations.]

EPA recognized that the auto industry was moving toward new topcoat technology in its October 20, 1981 policy statement for extending auto paintshop VOC compliance schedules. EPA has allowed extensions in other states. This regulation change makes it possible for GM to continue development of the new high solids basecoat/clearcoat (BC/CC) enamel topcoat systems to meet product objectives and VOC standards.

Because of the number of GM assembly plants and car lines involved, it has not been possible to complete the transition to BC/CC at all plants, to date. Knowing this, GM decided to follow an abatement strategy at the existing Framingham plant. The initial plan to meet regulation requirements was to complete preliminary engineering in mid-1985. Construction would begin in early 1986 with completion targeted in mid-1987. This plan would also require an extension even though the new technology was not going to be introduced at the Framingham facility. On June 7, 1985, GM notified the Department that the strategy for the Framingham facility had changed. GM is now planning to replace the current lacquer topcoat and final repair systems with new facilities to use the BC/CC enamel coatings as the new compliance strategy, rather than abating the current lacquer systems. GM will also install an incinerator on the primer-surfacer operation.

[The BC/CC topcoat consist of a relatively thin layer of highly pigmented basecoat followed by a thicker layer of clearcoat. The BC/CC coatings have a more appealing ap-

pearance than non-BC/CC topcoat systems and also offer improved chemical resistance and gloss retention. This technology has been used in Europe and Japan and American manufacturers feel they must adapt to this technique in order to remain competitive.]

The new paintshop will enable the plant to produce vehicles with a finish quality competitive in today's world market, and is consistent with the trend in the entire domestic auto industry to adopt the BC/CC process. Further, it is consistent with the rationale expressed in the October 20, 1981 U.S. EPA policy statement regarding the extension of original topcoat compliance dates for the purpose of developing and introducing new coating alternatives.

To accomplish this program and demonstrate compliance, major construction of new paint facilities is required, which is expected to be complete by August 1987. Thus, the necessity for the extension of the current compliance dates for topcoat and final repair operations from December 31, 1985 to December 31, 1987.

Offsetting emission reductions are required as detailed in 310 CMR 7.00 Appendix A. Some offsets are generated when the existing plant shuts down. Others are generated when emission reductions in a variety of areas are achieved that exceed planned emission reductions. These planned emission reductions are required for any state that is nonattainment for a criteria pollutant standard.

As specified in the 1982 State Implementation Plan for ozone and carbon monoxide, each source of VOC (a precursor pollutant to ozone formation) must reduce emissions of VOC to a level based on Reasonably Available Control Technology (RACT) by 1987. For each year between 1980 and 1987 a target reduction was established and the actual reductions in any given year are compared to the target to determine whether reasonable further progress (RFP) is being met. In the 1983 RFP demonstration for Eastern

Massachusetts the actual reductions exceeded the target by 10,000 tons. Much of this additional reduction was credited to the performance of the Massachusetts Inspection/ Maintenance (I/M) program.

The offsets needed for the GM, Framingham facility have been accomodated from the I/M program. New emission reduction estimates have been made for 1987 to ensure that the offsets will be permanent and not affect RFP demonstrations in the year of projected attainment (1987) or beyond.

Through this process Massachusetts has demonstrated that this amendment is consistent with the 1982 SIP and that Massachusetts will continue making reasonable further progress toward attaining the ozone standard by 1987.

Emission Reduction and Reasonable Further Progress

As stated previously the existing topcoat and final repair operations will continue to operate until the start-up of the new topcoat (BC/CC) system. As the topcoat and final repair operations are new, they are subject to New Source Review and therefore required to meet the Lowest Achievable Emission Rate (LAER) and offset any increase in emissions. GM submitted a LAER determination on November 6, 1985. Offsets have been identified and are discussed in more detail in this section. New Source Review requires that a net air quality benefit be derived in this process. The net result is that GM by offsetting proposed VOC emissions will achieve this net air quality benefit (a decrease from existing emissions) when the new topcoat operations replace the old. Existing emissions during 1986 and 1987 are expected to be as follows:

Expected Emissions

Year	Tons/year
1986	4288
1987	3816

These emissions estimates were calculated on a pounds of VOC emitted per car basis. Air pollution controls (i.e. incinerators) will be installed to reduce these emissions from these levels. These estimates also will be reduced due to normal equipment maintenance and downtime.

Compliance and Enforcement

Compliance and enforcement information will be discussed on a pounds of VOC per car basis. Although equivalent, this differs from the units as stated in the regulation. The limits in the regulation are on a pounds of VOC per gallon of coating (excluding water) basis. GM has provided adequate support in the permit application demonstrating equivalency by providing detailed coating content and transfer efficiency information. Although the regulation will not change to a pounds of VOC per car limit, for SIP purposes this is the limit that will be used.

Proposed Project Schedule

Two actions are being discussed at this public hearing. One is a regulation change affecting the existing General Motors facility in Framingham. The second issue relates to General Motors' proposed topcoat and final repair replacement facility. The proposed facility (considered to be a major modification) will be connected to the existing facility. The proposed replacement facility is related to the first issue in that the old facility (specifically the topcoat and final repair operations) will shutdown as the new facility starts up and will provide part of the required offsetting emission reductions. For that reason, the proposed project schedule is included here.

Proposed Schedule

Topcoat and Final Repair Operations

Building construction begins	December 18, 1985
Process equipment installation begins	June 13, 1986
Building construction complete	March 1, 1987

Process equipment installation complete	August 4, 1987
Existing topcoat and final repair shutdown	August 31, 1987
New topcoat and final repair (basecoat/clearcoat) start up	August 31, 1987

Air Quality Impacts

The regulation change will not cause or contribute an unreasonable risk to public health, welfare or safety as the result is a net decrease in emissions.

New source review has been required for the new portion of the facility. GM will be required to achieve the Lowest Achievable Emission Rate (LAER) on topcoat and final repair operations and must offset these emissions such that there is no increase in emissions and a net air quality benefit is achieved.

Public Participation

As provided for by law, the Department gives notice and provides opportunity to review technical support 30 days prior to proposing the regulation change at a public hearing on December 16, 1985.

MEPA

This project is "categorically exempt" from the "Regulations Governing the Preparation of the Environmental Impact Report" because the proposed regulation amendment will result in an increase in emission control. All reasonable measures have been taken to avoid or minimize adverse impacts.

Ozone Standard Attainment

The attainment date for the National Ambient Air Quality Standard for ozone will not be affected as the regulation requires compliance prior to the attainment date. Emissions of VOC will be reduced which should result in further progress toward attainment of the ozone standard.

Economic Impacts

The economic impacts from this change are negligible. Specifically, GM will shutdown the existing facility as the new facility starts up. It is not cost effective to control existing topcoat and final repair operations in the interim before the new facility is on-line. This interim control cost has been estimated to be 64.5 million.

g. Exhibit G: Letter from Louis F. Gitto to F. James McDonald (with attached "Notice of Violation and Reporting Requirement") (August 14, 1986)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION I
J. F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203

August 14, 1986

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

F. James McDonald, President
General Motors Corporation
3044 West Grand Boulevard
Detroit, MI 48202

Dear Mr. McDonald:

Enclosed is a Notice of Violation issued by the United States Environmental Protection Agency (EPA) to General Motors Corporation's (GM) automobile assembly plant in Framingham, Massachusetts concerning violations of the applicable State Implementation Plan (SIP) 310 CMR § 7.18(7), as approved by EPA. The Notice sets out the legal and factual bases which support it. EPA is likely to take enforcement action if General Motors does not correct the violation within the next thirty days.

Please note that issuance of this Notice of Violation does not preclude issuance of the Delayed Compliance Order (DCO) which has recently been the subject of negotiations among General Motors, EPA and the Massachusetts Department of Environmental Quality Engineering. For federal approval of any DCO, however, we must insist that the negotiation process proceed in an expeditious manner. If it is not possible for the parties to reach agreement on the content of a DCO within 30 days of your receipt of

this Notice and if the violation continues, EPA will decide which other enforcement options to pursue under Sections 113 and 120 of the Clean Air Act (42 U.S.C. §§ 7413 and 7420).

General Motors may confer with EPA concerning the violation cited in the Notice. The Notice sets out the procedure to request a conference. I urge you to request such a conference to discuss the most expeditious method for General Motors to come into compliance with the applicable SIP, 310 CMR § 7.18(7), as approved by EPA, so that we may reach agreement regarding General Motors' compliance plan, including an implementation schedule. A conference may also clarify whether a DCO is negotiable in this case.

Also enclosed is a Reporting Requirement, issued under the authority of Section 114 of the Clean Air Act, which requires that GM submit to EPA certain information and records on a monthly basis.

Sincerely,

/s/ Louis F. Gitto
Louis F. Gitto, Director
Air Management Division

cc: B. Maillet, DEQE
D. Shallcross, DEQE
G. Hailer, DEQE
M. Maher, DEQE
P. McCarroll, GM
W. McFarland, GM
R. Boyd, GM
F. Bellafato, GM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Region I

Docket No. AAA-86-1108

NOTICE OF VIOLATION

and

REPORTING REQUIREMENT

IN THE MATTER OF
General Motors Corporation
63 Western Avenue
Framingham, MA 01701

Proceedings under Section 113 and 114 of the Clean Air Act, as amended, 42 U.S.C. §§ 7413 and 7414

STATUTORY AUTHORITY

Under Section 113(a)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1), the Administrator of the United States Environmental Protection Agency (EPA) is required to notify any person in violation of any requirement of an applicable implementation plan, whenever the Administrator determines that the person is violating the plan. The Administrator has delegated this authority to the Regional Administrator.

The Commonwealth of Massachusetts adopted an "applicable implementation plan," within the meaning of Section 113(a)(1) of the Act, which was approved by EPA under Section 110 of the Act. The plan includes the Air Pollution Control Regulations (State Regulations) codified at 310 CMR § 7.00 *et seq.*

Section 114(a)(1) of the Act allows the Administrator to require the owner or operator of any emission source to

provide such information as may be required to determine whether the person is in violation of the requirements of an applicable implementation plan.

FINDINGS

1. General Motors Corporation (GM) owns and operates an automobile assembly plant which is located in Framingham, Massachusetts. This facility includes topcoating and final repair automobile surface coating processes.

2. General Motors Corporation is a company whose headquarters is located in Detroit, Michigan, and which is incorporated in the State of Delaware.

3. The topcoating and final repair automobile surface coating operations at GM in Framingham, Massachusetts together emit in excess of 100 TPY of volatile organic compounds (VOCs).

4. GM in Framingham, Massachusetts does not own or operate any add-on pollution control equipment for the control of VOCs from its existing topcoating and final repair operations.

5. The topcoating and final repair operations at GM in Framingham, Massachusetts are subject to the requirements of Regulation 7.18(7) of the Massachusetts State Implementation Plan (SIP) (310 CMR § 7.18(7)), as approved by EPA on September 16, 1980 and November 9, 1983 (45 FR 61293 and 48 FR 51840). EPA has not approved into Massachusetts' SIP any changes made to 310 CMR § 7.18(7) by the state since November 9, 1983.

6. 310 CMR § 7.18(7), as approved by EPA, provides that, after December 31, 1985, no person owning or controlling the operation of any automobile assembly plant shall cause, suffer, allow, or permit emissions from the

topcoat application, flash off area, and oven in excess of 2.8 lbs of VOCs per gallon of coating (excluding water) at application, or from the final repair application, flash off area, and oven in excess of 4.8 lbs VOC per gallon of coating (excluding water) at application. Compliance with these limitations shall be based upon an arithmetic average of topcoat coatings and of final repair coatings. All emission calculations are to be done on a solids applied basis.

7. In response to a Reporting Requirement EPA issued on July 3, 1986 under Section 114 of the Act, 42 U.S.C. § 7414, on July 24, 1986 GM submitted to EPA coating content data derived from independent laboratory coating analyses using EPA Reference Method 24. These data and GM's response show that from January 1, 1986 through June 30, 1986 GM used topcoatings with an arithmetic average VOC content of 5.02 pounds VOC per gallon of coating (excluding water) at application, and that each topcoat GM used exceeded the 2.8 pounds emission limit in 310 CMR § 7.18(7). GM used these topcoatings on a total of 124 days during this period. The data also show that during this period GM used final repair coatings with an arithmetic average VOC content of 6.18 pounds VOC per gallon of coating (excluding water) at application, and that each final repair coating GM used exceeded the 4.8 pound emission limit in 310 CMR § 7.18(7). GM used these final repair coatings on a total of 124 days during this period. GM's use of these coatings caused VOC emissions from the topcoating and final repair operations in excess of those allowed under 310 CMR § 7.18(7), as approved by EPA.

Based on the foregoing, I hereby find General Motors to be in violation of the SIP requirement at 310 CMR § 7.18(7), as approved by EPA.

ENFORCEMENT

General Motors has thirty days to correct the violations cited above. If the violations continue beyond the thirtieth day from the date of receipt of this Notice, EPA may issue General Motors an Administrative Order requiring compliance with the applicable SIP, 310 CMR § 7.18(7), as approved by EPA, or may bring a civil action in federal district court for an injunction and/or monetary penalties of up to $25,000 per day of violation. See Section 113(b) of the Act, 42 U.S.C. § 7413(b). Furthermore, if General Motors knowingly violates the applicable SIP requirement, 310 CMR § 7.18(7), as approved by EPA, then under Section 113(c) of the Act, 42 U.S.C. § 7413(c), General Motors, its officers and/or employees may be subject to criminal penalties of up to $25,000 per day of violation and/or imprisonment for not more than one year.

OPPORTUNITY TO CONFER

General Motors may confer with EPA concerning this Notice and the findings on which it is based. To schedule a conference, please contact attorney Timothy Williamson at (617) 565-3350 within one week of receipt of this Notice. General Motors has the right to be represented by counsel at the conference.

REPORTING REQUIREMENT

Pursuant to Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1), beginning September 10, 1986 GM is hereby required to submit the following information within 10 days of the beginning of each month, until EPA terminates this requirement:

1. A written statement including:

   a. for each day of the previous month, the arithmetic average VOC content of topcoatings applied at the

   facility, expressed in pounds VOC per gallon of coating excluding water at application;

   b. for each day of the previous month, the arithmetic average VOC content of final repair coatings applied at the facility, expressed in pounds VOC per gallon of coating excluding water at application;

   c. the total amount of coating used for topcoating during the previous month, expressed in gallons; and

   d. the total amount of coating used for final repair during the previous month, expressed in gallons.

2. For each coating used during the previous month but for which GM has not previously submitted coating content data, the coating content data needed to complete the VOC Data Sheet on Pages II-2 and III-2 and III-3 of EPA document EPA-450/3-84-019, a copy of which is attached.

The information required above shall be certified in writing by an appropriate official and shall be submitted to the following addresses:

Louis F. Gitto, Director
Air Management Division
U.S. Environmental Protection Agency
Region I (APC-2311)
John F. Kennedy Federal Building
Boston, MA 02203

ATTN: Catherine Ehlhardt

and

Michael Maher, Chief
Northeast Region
Department of Environmental
Quality Engineering
5 Commonwealth Street
Woburn, MA 01801

Under Section 113(b)(4) of the Act, failure to comply with or provide the information required pursuant to this request may result in further enforcement action. You should also be aware that Section 113(c)(2) provides for possible criminal penalties for anyone who knowingly makes any false statement, representation, or certification in a response to an EPA reporting requirement.

GM may assert a business confidentiality claim covering part or all of the information required, in the manner described by 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when EPA receives it, the information may be made available to the public without further notice to GM. GM should read the above-cited regulation carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. For example, the Clean Air Act provides that "emission data" shall in all cases be made available to the public. See 42 U.S.C. § 7414(c).

EFFECTIVE DATE

This notice shall become effective upon its receipt by General Motors. If General Motors has any questions regarding this matter, please contact attorney Timothy Williamson at (617) 565-3350 or engineer Catherine Ehlhardt at (617) 565-3262.

/s/ Michael R. Deland — 8/14/86
Michael R. Deland — Date
Regional Administrator

5. Affidavit of John L. Hanisch (October 21, 1987)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 87-2068 MC

UNITED STATES OF AMERICA,
Plaintiff,

v.

GENERAL MOTORS CORPORATION.
Defendant.

City of Boston
County of Suffolk
Commonwealth of Massachusetts

AFFIDAVIT OF JOHN L. HANISCH

John L. Hanisch, being duly sworn, states as follows:

1. Since March 2, 1986, I have served as Chief of the State Air Programs Branch of the Environmental Protection Agency ("EPA") Region I. EPA Region I covers the six New England States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. My responsibilities include oversight and management of the development of State Implementation Plans ("SIPs") pursuant to Section 110 of the Clean Air Act, 42 U.S.C. § 7410 (the "Act"), and the enforcement of these SIPs, pursuant to Sections 113 and 120 of the Act, 42 U.S.C. §§ 7413 and 7420.

2. From March 1980, to March 2, 1986, I served as Chief of the State Air Programs Section ("SAPS") of EPA Region I. My responsibilities included oversight and management of the development of SIPs for the Region I

states. The Deputy Regional Administrator has approved a reorganization which renames the SAPS the Planning and Technological Evaluation Section ("PTES").

3. This affidavit is submitted in connection with *United States of America v. General Motors Corporation*, USDC D. Mass., Civil Action No. 87-2068 MC. I have personal knowledge of the facts contained in this affidavit.

II. EPA Region I SIP Approval Process

4. In EPA Region I, when a state develops a SIP for EPA's approval under Section 110(a)(2) of the Act, 42 U.S.C. § 7410(a)(2), the state submits that SIP to Region I's Air Management Division ("AMD"). AMD transmits most of these SIPs to the PTES for reveiw. The state also submits to the AMD and PTES any proposed revision to a SIP requiring EPA approval under Section 110(a)(3)(A) of the Act, 42 U.S.C. § 7410(a)(3)(A).

5. When the Region I PTES receives a proposed SIP revision, it first determines whether the state's submission is administratively and technically complete. If not, EPA returns the proposal to the state for completion. Once the PTES has a complete submission of a proposed SIP revision, PTES, in conjunction EPA Region I Office of Region Counsel, must conduct a review of the proposal and make technical and legal findings to determine whether the proposal meets the requirements of the Act. A typical SIP revision for a single source of volatile organic compounds ("VOC") in an ozone nonattainment area requires that PTES determine whether:

a. The proposed compliance schedule in the SIP revision is as expeditious as practicable, which requires examining the proposed technology, alternate technologies, and the special circumstances at the source;

b. The proposed SIP revision will protect reasonable further progress toward attainment of

the national ambient air quality standard, which requires an analysis of the state's reported reduction in VOC emissions and the impact the proposed revision would have on those reductions;

c. The proposed SIP revision is enforceable, which requires a technical and legal review of the wording of the State's compliance schedule and any state order which is part of the SIP revision;

d. The proposal contains adequate monitoring, recordkeeping, and reporting requirements to enforce compliance, which requires a case-by-case examination of a source's manufacturing process to determine the most accurate way of measuring VOC emissions that is not unreasonably burdensome using EPA approved methods;

e. The state held a public hearing on the proposal after at least thirty days public notice; and

f. The proposal provides for the implementation of reasonably available control technology which requires a comparison of the source's proposed control technology with the control technology of which EPA is aware for other sources in that category.

6. Once the PTES has made the findings outlined in ¶ 5, above, the PTES drafts a notice of proposed rulemaking ("NPR") for the *Federal Register*, a technical support document, and an internal briefing memorandum. The Regional Administrator of Region I must sign this package before the PTES sends it to EPA Headquarters in Washington, D.C. and to the Office of Air Quality Planning and Standards ("OAQPS") in Research Triangle Park, Durham, North Carolina. Internal EPA guidance requires that PTES

send out the draft NPR within five months after the date PTES receives a complete package from the state.

7. After review and approval at EPA Headquarters and OAQPS the NPR is published in the *Federal Register*. The accompanying affadivit describes EPA Headquarters and OAQPS review of the NPR before its publication in the *Federal Register*.

8. In most cases, the public then has thirty days to comment on EPA's proposed approval or rejection of the SIP revision. In the case of complicated or controversial proposals, EPA may extend that comment period. After the comment period closes, the PTES must review each comment and address the comment in a final rulemaking notice ("FRN"). The PTES must investigate any new information received in the comments and prepare a rational response to each comment. The PTES then prepares a draft FRN for publication in the *Federal Register*, a technical support document, and an internal briefing memorandum. The Regional Administrator must again sign off on this package before the PTES sends it to EPA Headquarters and OAQPS for review. EPA's Administrator must sign the FRN before EPA publishes it in the *Federal Register*. Internal EPA guidance requires that the PTES send out the draft FRN within five months after the date the comment period on the NPR closes.

9. In the past three years, Region I PTES has processed an average of thirty-five SIP actions or revisions each fiscal year. In fiscal year 1985, PTES processed about twenty proposed SIP revisions, in 1986 PTES processed thirty, and in 1987 PTES processed fifty-six.

III. EPA Region I SIP Enforcement Process

10. The State Air Programs Branch contains not only the PTES, but also the Control Technology and Compliance Section ("CTCS"). The CTCS is responsible for enforcing the emission limits and requirements EPA has approved

into Region I's SIPs and for overseeing the states' enforcement of the SIPs. Part of the CTCS's enforcement program involves developing cases to be filed under Section 113(b) of the Act, 42 U.S.C. § 7413(b), to bring sources into compliance with SIPs and to collect civil penalties for SIP violations. EPA views its ability to collect such penalties as a critical element of its enforcement program. The CTCS operates under EPA guidance requiring it to collect substantial civil penalties from SIP violators in all but the most rare cases. Further, EPA has developed a Clean Air Act Civil Penalty Policy to guide the Agency in imposing penalties which will provide appropriate incentives for sources to comply with the SIPs.

11. Since January 1, 1985, the CTCS has issued twenty-four notices of violation ("NOVs") to sources violating VOC emission limits in Region I SIPs. Of these twenty-four cases, six involved sources for which the state was developing a proposed SIP revision to relax the source's emission limit or for which the state had already submitted to EPA a proposed SIP revision doing so. If preliminary review of a proposed SIP revision applicable to a source violating the SIP indicates that the revision appears to be approvable, and that the source would be in compliance with the SIP as revised, EPA guidance allows the CTCS to forbear from further enforcement action after issuing the NOV. Otherwise CTCS is obligated to enforce the original emission limits in the unrevised SIP.

IV. DEQE's Proposed SIP Revision for General Motor's Framingham Plant

12. On December 30, 1985, the Massachusetts Department of Environmental Quality Engineering ("DEQE") submitted to PTES a proposed revision to the SIP provisions applicable to the surface coating lines at the General Motors ("GM") automobile assembly plant in Framingham, Massachusetts. On May 30, 1986, DEQE requested that EPA Region I delay action on this proposed SIP revision

until June 20, 1986. A true copy of DEQE's letter from my files is attached to this Affidavit as Attachment A. On July 2, 1986 Region I sent a draft NPR proposing to disapprove DEQE's SIP revision for GM to EPA Headquarters and OAQPS. THE NPR was published in the *Federal Register* on December 2, 1986. A true copy of the NPR from my files is attached to this Affidavit as Attachment B. The comment period on EPA's proposed disapproval closed on January 2, 1987. On June 30, 1987, Region I sent a draft FRN to EPA Headquarters and OAQPS responding to comments on EPA's proposed disapproval and finally disapproving DEQE's SIP revision for GM.

13. According to air quality monitoring data available to me from OAQPS, sixty-two metropolitan areas in the United States failed to meet the National Ambient Air Quality Standard for ozone during the period from 1984 through 1986. Seventeen of these areas are on the Eastern Seaboard, Washington, D.C. and north.

/s/ John L. Hanisch
John L. Hanisch

Signed and sworn to before me on this 21st day of October, 1986.

/s/ Evelyn M. Sullivan
Notary Public

My commission expires:
July 28, 1989

a. Attachment A: Letter from Bruce K. Maillet to Lou Gitto (May 30, 1986)

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Quality Engineering
Division of Air Quality Control
One Winter Street, Boston 02108

S. RUSSELL SYLVA
Commissioner

May 30, 1986

Mr. Lou Gitto
Director
Air Division
U.S.E.P.A.
John Fitzgerald Kennedy Building
Boston, MA 02108

Dear Mr. Gitto:

As you are aware, we are negotiating and administrative order under Regulation 310 CMR 7.18 with General Motors Corporation and your office which will be a Delayed Compliance Order (DCO) under the clean air act. This action would eliminate the need for a revision to the Massachusetts State Implementation Plan.

The draft DCO has been reviewed by DEQE, EPA and GM and attorneys for each party are scheduled to confer by telephone on June 2, 1986. I believe Tim Williamson of U.S.E.P.A. will represent you.

In this regard, it would be appropriate for you to delay action on our SIP revision request until June 20, 1986 to allow time to finalize the Delayed Compliance Order. Please consider this a request for such a delay since a DCO will be an easier action to achieve and will accomplish the same result as the proposed SIP revision.

Very truly yours,
/s/ Bruce K. Maillet
Bruce K. Maillet
Director

BKM/efg.

cc: General Motors
Doug Shallcross

b. Attachment B: EPA, "Approval and Promulgation of Implementation Plans; Massachusetts; Automobile Surface Coating," 51 Fed. Reg. 43394 (1986)

40 CFR Part 52

[FRL-3120-3]

Approval and Promulgation of Implementation Plans; Massachusetts; Automobile Surface Coating

AGENCY: Environmental Protection Agency [EPA].

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a State Implementation Plan revision submitted by the Commonwealth of Massachusetts. The revision requests an extension of the final compliance dates for topcoating and final repair coating of automobiles from December 31, 1985 to August 31, 1987. General Motors in Framingham, Massachusetts is the only automobile surface coating source in the State. This action does not change the final emission limits at the General Motors plant nor will it increase or decrease emissions.

The intended effect of this action is to ensure reasonable further progress towards the attainment of the ozone standard by the Massachusetts demonstration date of December 31, 1987.

DATES: Comments must be received on or before January 2, 1987. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Air Management Division, Room 2311, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203 and

the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene (617) 565-3248; FTS 835-3248.

SUPPLEMENTARY INFORMATION: On December 30, 1985, S. Russell Sylva, Commissioner of the Department of Environmental Quality Engineering (DEQE), submitted a revision to the Massachusetts State Implementation Plan (SIP). The revision to the automobile surface coating regulation (310 CMR 7.18(7)) requests an extension of the final compliance dates from December 31, 1985 to August 31, 1987 for the topcoat and final repair applications.

Background

On September 16, 1980 (45 FR 61293), EPA approved Massachusetts Regulation 310 CMR 7.18(7) which contained the following schedule for compliance with the topcoat and final repair reasonable available control technology (RACT) emissions limitations. The topcoating application limitations were 5.8 lbs VOC/gallon of coating, minus water, by December 31, 1979; 5.0 lbs VOC/gallon of coating, minus water, by December 31, 1982; and 2.8 lbs VOC/gallon of coating, minus water, by December 31, 1985. The final repair application limitation was 4.8 lbs of VOC/gallon of coating, minus water, by December 31, 1985. These dates were consistent with a nationally developed schedule for achieving reductions from the automobile surface coating industry.

On June 7, 1985, GM informed the DEQE that it intended to meet the 2.8 lbs VOC/gallon of coating, minus water, for topcoat and 4.8 lbs VOC/gallon of coating, minus water, emissions limitations by modifying its plant to use basecoat/clearcoat enamel coatings and by the installation of incinerators on the topcoat ovens. GM requested an extension of the final compliance date from December 31, 1985 to December 31, 1987 (changed to August 31, 1987 after DEQE's review of the permit application) in order to complete its major modification. General Motors submitted proposed plans, in a new source review, air permit application for the major modification, on August 7, 1985.

The Revision

The DEQE submitted this extension revision based on EPA's policy statement of October 20, 1981 (46 FR 51366) which established criteria that the Agency uses to review modifications to existing SIP compliance schedules for automobile paint shop operations. EPA evaluated this submittal based on the established criteria and has determined that it does not meet several of the established criteria for the following reasons.

Review of SIP Revision Relative to 46 FR 51366 Criteria

1. The purpose of the October 20, 1981 **Federal Register** policy statement was to allow deferral of the compliance dates for paint shop operations so that more cost-effective control methods could be implemented.

EPA Evaluation: In order to meet the emission limits, General Motors is modifying its plant by constructing a new paint shop capable of topcoating cars with basecoat/clearcoat enamel coatings and controlling the topcoating oven emissions with incinerators. The State did not document that the construction of new paint shop lines and installation of incinerators would be a more cost-effective control method than the installation of abatement equipment on the existing lacquer topcoating lines.

2. Any deferral of the compliance dates was still required to assure continued compliance with section 172 of the Clean Air Act (CAA) to implement reasonable available control technology (RACT) as expeditiously as practicable.

EPA Evaluation: General Motors did not document that it was impracticable for the company to meet the existing

compliance date using incineration on the existing lines or on lines modified to accommodate the basecoat/clearcoat technology. Based on experience at other plants, EPA believes that such technology existed long enough before the end of 1985 to permit General Motors to install the basecoat/clearcoat technology before that date. Instead, however, General Motors did not decide on its control method until June 7, 1985 when it requested, in a letter to DEQE, an extension until December 31, 1987. General Motors' 1985 request for an extension, only six months from the final compliance date and at least three years after the availability of the basecoat/clearcoat technology, under a policy statement that was published in 1981, cannot be considered implementing reasonably available control technology as expeditiously as practicable.

3. Additionally, EPA's 1981 policy stated that postponement of the compliance dates would be allowed for further development of coating technology.

EPA Evaluation: The basecoat/clearcoat technology and incineration technology have already been developed, and General Motors has not documented, that with the technology it intends to use in Framingham, it needs two additional years for technology development.

4. Under EPA's policy, an increase in the amount of emissions from the source is not allowed during deferral of the compliance dates.

EPA Evaluation: The DEQE SIP submittal predicts that General Motors' emissions during the deferral would increase above the 1984 actual emissions, thus making it ineligible for the deferral.

5. The policy states that any modifications must be designed to be capable of subsequent adoption of a new generation of low solvent coatings.

EPA Evaluation: The State has not demonstrated that General Motors' new basecoat/clearcoat lines will be capable of implementing low solvent technology.

6. Each revision has to be evaluated for its impact on the overall State Implementation Plan, including emission reductions necessary to demonstrate reasonable further progress (RFP) toward attainment of the ozone standard.

EPA Evaluation: The entire Commonwealth of Massachusetts is nonattainment for ozone, with an attainment deadline of December 31, 1987. Massachusetts experienced 14 days of violations of the ozone standard during the 1985 ozone season.

7. The DEQE stated in its response to comments given at the public hearing, that General Motors' emissions would not affect the State's ability to demonstrate a 35% reduction in emissions of volatile organic compounds (VOCs). (VOCs are precursors to ozone.) This percentage was used in the 1982 SIP to demonstrate attainment with the ozone standard in the Boston Air Quality Control Region.

EPA Evaluation: The DEQE did not submit a complete RFP demonstration with the compliance status of VOC sources and graphs representing annual linear reductions. A complete RFP report is needed to support the DEQE's claim that the ozone primary standard for protecting public health will be attained by the end of 1987 despite the compliance date extension for General Motors and that RFP will be achieved in the interim. Based on the number of ozone violations and their magnitude, EPA believes that there is some evidence that Massachusetts will continue to experience violations of the standard beyond December 31, 1987.

Therefore, EPA is proposing to disapprove the proposed revision to the Massachusetts State Implementation Plan, submitted on December 30, 1985, extending the final com-

pliance dates for the topcoat and final repair applications under the automobile surface coating regulation.

EPA is soliciting public comments on issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

Proposed action

EPA is proposing to disapprove the SIP revision to the Massachusetts automobile surface coating regulation, 310 CMR 7.18(7), to extend the topcoat and final repair applications final compliance dates.

This disapproval will prevent GM from deferring the topcoat and final repair compliance dates (from December 31, 1985 to August 31, 1987 by revising the State regulation. Extensions of the December 31, 1985 date should instead be obtained through an enforcement mechanism.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities because it affects only one source. In addition, this action imposes no additional requirements on the source.

Under Executive Order 12291, today's action is "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution Control, Ozone.

Dated: July 1, 1986.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 86-27030 Filed, 12-1-86; 8:45 am]

BILLING CODE 6560-50-M

6. Declaration of John J. Silvasi (October 21, 1987)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 87-2068 MC

UNITED STATES OF AMERICA,
Plaintiff,

v.

GENERAL MOTORS CORPORATION,
Defendant

Declaration of John J. Silvasi

John J. Silvasi, declares as follows:

I. Background

1. I am employed by the United States Environmental Protection Agency. I work within the Office of Air & Radiation's Office of Air Quality Planning and Standards ["OAQPS"] in the Control Programs Development Division ["CPDD"]. Within CPDD, I serve as the Chief of the Plans Analysis Section. I have held this position since June 9, 1985.

2. The duties of the Control Programs Development Division include serving as the lead Office for EPA Headquarters review of SIP revisions which have been submitted to EPA Regional Offices by state or local agencies. Within the Division, the Plans Analysis Section has lead responsibility for coordinating Headquarters-level review of SIP revisions.

3. This affidavit is being submitted in connection with the United States' response to General Motors' motion to dis-

miss in *United States of America* v. *General Motors Corp.*, United States District Court for Massachusetts, C.A. No. 87-2068 MC.

II. Current EPA Headquarters SIP Revision Review Process

4. After a Regional Office has completed working on a SIP revision with the state or local agency which has submitted it to EPA, it prepares a draft proposed rulemaking package which is forwarded to EPA Headquarters for review and concurrence.

5. Headquarters review is not a perfunctory process. It is vitally important to ensure that EPA action on SIP revisions will be in conformity with nationally applicable legal and policy requirements. As a result, each SIP revision package must be reviewed for national consistency, technical sufficiency, and regulatory interpretation.

6. EPA Headquarters review of a typical SIP revision package entails the following. Within OAQPS, the CPDD reviews for consistency with national regulations and policy, and the Stationary Source Compliance Division reviews for national consistency respecting compliance and enforcement issues. In addition, two other OAQPS divisions may review SIP revision packages in given instances: the Monitoring and Data Analysis Division reviews any necessary modeling analyses, and the Emissions Standards and Enfgineering Division reviews the technical sufficiency of any proposed emissions controls.

The Office of General Counsel reviews for legal sufficiency. Typically, OAQPS and OGC will coordinate their comments, communicate them to the Regional Office, and assist the Regional Office in attempting to resolve issues which have been raised. The Regional Office staff redrafts portions of the Federal Register Notice and other portions of the package, as appropriate, in accordance with the Headquarters comments. The Regional staff then obtains

the Regional Administrator's concurrence on the revised package, and resubmits the package to Headquarters for final clearance.

7. Because of the complexity of the issues which are often involved, experience has shown that case-by-case national review of SIP revisions is necessary. Also, because issues are subject to significant change during the time period when the Regional Office is working with the relevant state or local agency on the SIP revision, concurrent Headquarters and Regional review is impractical. To expedite matters as much as possible, Headquarters personnel are often consulted by Regional offices in the period prior to the submission of a rulemaking package to Headquarters.

8. After a Regional Office has completed its review of the comments submitted on a proposed SIP revision rulemaking, it prepares a draft final rulemaking package which it submits for Headquarters review and concurrence. Headquarters review of the package generally proceeds as outlined above in Paragraph 6. With respect to the final rulemaking package, however, the emphasis is on ensuring that all recommendations, conditions, and requests for information set forth in the proposed rulemaking have been completed, and that all comments raised during the comment period on the proposed rulemaking have been adequately treated. In addition, the final package must be reviewed and signed by the EPA Administrator.

9. EPA has established as its goal that Headquarters review of SIP revision packages be accomplished within 2 months for both proposed rulemakings and final rulemakings. Due to the number of SIP revisions which must be processed and to staffing constraints, these target timeframes often cannot be met. The number of SIP revisions submitted annually to EPA Headquarters during the 1983 to 1987 time period averaged between 175 and 200. The resources allocated to EPA Headquarters review of SIP revisions currently consists of the equivalent of 12 full time

positions. EPA has recently promulgated a new National Ambient Air Quality Standard for particulate matter pursuant to Section 107 of the Clean Air Act. In addition, the Agency is considering requiring significant revisions to many state VOC SIP's due to the the failure of numerous areas to achieve the NAAQS for ozone by December 31, 1987. As a result, the number of SIP revisions needing to be processed at EPA Headquarters will probably significantly increase in the near future.

III. DEQE's Proposed SIP Revision for General Motor's Framingham Plant

10. The draft proposed rulemaking package for the SIP revision submitted by the Massachusets DEQE for General Motors' Framingham, Massachusetts plant on December 30, 1985 was logged in at the Office of Air Quality Planning and Standards on July 22, 1986. The Notice proposing disapproval of the SIP revision appeared in the Federal Register on December 2, 1986.

11. The draft final rulemaking package for the Framingham plant SIP revision was logged in at the Office of Air Quality Planning and Standards on July 13, 1987. The package is currently proceeding through the Headquarters review process.

Further declarant sayeth naught.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 21st day of October, 1987.

/s/ John J. Silvasi
John J. Silvasi

7. Declaration of Bruce A. Armstrong (October 22, 1987)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civ. Action No. 87-2068 MC

UNITED STATES OF AMERICA,
Plaintiff,

v.

GENERAL MOTORS CORPORATION,
Defendant

Declaration of Bruce A. Armstrong

1. I am employed by the United States Environmental Protection Agency. I work as an environmental engineer in the Office of Policy Analysis and Review, which is a staff office in the Office of the Assistant Administrator for Air and Radiation.

2. My duties include monitoring and coordinating the progress through EPA Headquarters of SIP revision rulemaking packages once they have cleared the Office of Air Quality Planning and Standards.

3. This declaration is being submitted in connection with the United States' response to General Motors' motion to dismiss in *United States of America v. General Motors Corp.*, United States District Court for Massachusetts, C.A. No. 87-2068 MC.

4. The rulemaking package finally disapproving the SIP revision submitted by the Massachusetts Department of Environmental Quality Engineering for the General Motors Framingham, Massachusetts plant has completed staff level Headquarters review and awaits final concurrence.

Further declarant sayeth naught.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 22nd day of October, 1987.

/s/ Bruce A. Armstrong
Bruce A. Armstrong

8. EPA, "Guidance on Processing SIP Revisions (And 111(d) Plans)" (excerpts)

United States Environmental Protection Agency

Office of Air Quality
Planning and Standards
Research Triangle Park NC

Air

Guidance on Processing SIP Revisions (And 111(d) Plans)

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III. SIP ACCOUNTABILITY AND TRACKING (THE 5-2/5-2 CLOCK)

A. Accountability

In 1981, a new tracking and accountability system was established. Its purpose is to insure a relatively timely response to State-initiated SIP revisions. In the majority of cases the following scenario applies: Each Regional Office (RO) has 5 months from the time it receives a complete SIP revision from a State to analyze the package, prepare a Notice of Proposed Rulemaking (NPR) (described in Chapter I) and transfer review responsibility to EPA Headquarters (HQ). Headquarters has 2 months to review the notice for national consistency, obtain the concurrence of the Assistant Administrator for Air and Radiation (AA for OAR) and the Office of Management and Budget (OMB) (if necessary) and publish it in the *Federal Register* (FR) for public comment. (Described in Chapter II).

The clock reverts to the RO upon publication. The RO has 5 months from that date to review and respond to public comments, prepare a Final Rulemaking Notice (FRN) and transfer responsibility to HQ. In situations where revisions are being parallel processed, the second 5 months begins when the final submittal is received or the NPR is published, whichever is later. EPA HQ then has 2 more months to review the document for national consistency, obtain the concurrence of the AA for OAR and OMB (if necessary), obtain the Administrator's signature and publish the FRN in the *Federal Register*.

During the HQ review period it is possible that the SIP package may be placed back on the RO clock. The following list is not intended to indicate all possible situations where the responsibility would shift back to the RO. However, some examples include:

A. When significant portions or all of the notice must be rewritten. Often it may need more in-depth discussion of an issue and the HQ staff may help draft the changes. Sometimes a Direct Final action must be rewritten as an NPR.

B. When additional information or specific commitments in writing must be obtained from the State.

C. When an RO action is inconsistent with national policy.

D. When material for IBR remains incorrect after the RO has had a chance to correct it.

E. When a SIP package neither includes a communications strategy or a negative declaration.

Regional Office and HQ personnel should attempt to keep CPDD-W fully informed of their discussions on each package. A case-by-case determination will be made on whose clock the package rests. Generally, of the RO contact indicates that the change will only take a couple of days, the package will remain on the HQ clock. If, however, delays occur beyond that period, CPDD-W will return the package to the RO clock, AS OF THE DATE IT WAS ORIGINALLY INFORMED OF THE NEED FOR A REWRITE OR ADDITIONAL INFORMATION, by placing a call to the appropriate RO Section Chief.

In other cases when problems arise, CPDD-W will determine on whose clock the package should be. If there are national policy issues which need to be addressed, the SIP should be on the HQ clock. In general, where an action proposed by an RO is consistent with existing national policy, the responsibility for any delay belongs to Headquarters. If sufficient guidance has been provided by HQ to fully explain the issues and the steps necessary to resolve the problem, the clock will revert to the RO. Often, problems that require a SIP package to be returned to the RO clock can be avoided by direct discussion between

RO and HQ staff during the RO's review of the State submittal and development of the notice. Regional Office contacts should attempt to initiate these conversations more frequently.

B. Tracking

1. CPDD-W Tracking

CPDD-W is responsible for managing the HQ SIP accountability and tracking system.

CPDD-W will provide each Headquarters review office and Regional Office weekly computerized status reports of all SIP packages undergoing Headquarters review. The report will also indicate which offices have yet to concur on each SIP action.

CPDD-W will provide each Headquarters review office weekly reports which list by office those SIP's on which it has yet to concur.

CPDD-W will track and provide each Headquarters review office and Regional Office a report on action items resulting from Standing SIP Committee Meetings.

CPDD-W will provide senior program management, each Headquarters review office and each Regional Office a formal report as of the midpoint and end of the quarter on the status of SIP packages being processed in Headquarters, and on any problems that are delaying SIP packages.

2. CPDD Tracking

CPDD is responsible for tracking the status of SIP revisions in the Regions and reporting the status to the SPMS accountability system on a quarterly basis. The status report will cover the time interval between receipt in the RO and receipt of the package in Headquarters.

SIP revisions should be reported to CPDD within 2 weeks of receipt in the RO.

The 5 month date for proposals will start on the date that the revision is received in the RO.

The receipt of additional data or material pertaining to a revision will not change the original submittal date.

For revisions that have been recorded in CPDD's records, the RO will notify CPDD in writing if a revision has been withdrawn (returned to the State) with a brief statement as to the reason. CPDD will enter into the computer "incomplete returned to State." The revision will not be counted as overdue and will be given a new submittal date when the State returns the revision to the RO.

If it is anticipated that a package may not be resubmitted at all, the RO should advise CPDD to delete the revision.

The RO has 5 months from the date of publication of the proposed rulemaking to submit a final rulemaking unless it is being parallel processed. In this case, the second 5 months begins on the later of two actions: the submittal of the adopted SIP or publication of the NPR.

In circumstances in which CPDD-W transfers a SIP package from the HQ clock to the RO clock, the revisions included in the package will be counted as overdue when the original 5 month time period expires. It shall be the Region's responsibility to arrange with CPDD-W the removal of packages from their clock. CPDD-W will notify CPDD concerning the removal of packages from the RO clock.

CPDD will send each RO, on a monthly basis, a SIP status report listing those revisions that are currently overdue and those that are due by the end of the current quarter. In addition, each RO will be contacted approximately 10 days prior to the end of the quarter and informed of those revisions that will be overdue (including those on the RO clock) on the SPMS report. It shall be

the responsibility of the RO to contact CPDD regarding corrections to the overdue list (including publication dates).

The overdue list must be reported to SPMS on the 10th day of the month following the end of the quarter unless notified otherwise.

9. First Amended Complaint

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action
No. 87-2068 MC

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL MOTORS CORPORATION,

Defendant.

FIRST AMENDED COMPLAINT

Plaintiff, the United States of America ("United States"), at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

NATURE OF ACTION

1. This is a civil action pursuant to Section 113(b) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(b), seeking civil penalties for emissions of volatile organic compounds ("VOC") in violation of the Massachusetts State Implementation Plan and the Act.

JURISDICTION AND VENUE

2. This court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this District pursuant to 42 U.S.C. § 7413(b) and 28 U.S.C. § 1391(b) and (c) because the

alleged violations took place in the District of Massachusetts and because the Defendant is licensed to do business and is doing business in Massachusetts.

4. Authority to bring this action on behalf of the EPA Administrator is vested in the United States Department of Justice pursuant to Section 305 of the Act, 42 U.S.C. § 7605.

5. Notice of the commencement of this action has been given to the Massachusetts Department of Environmental Quality Engineering ("DEQE") in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b).

DEFENDANT

6. Defendant, General Motors Corporation ("General Motors"), is a Delaware corporation authorized to do business in Massachusetts, with its principal place of business in Detroit, Michigan. General Motors is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

7. General Motors owns and operates an automobile assembly and painting facility located in Framingham, Massachusetts (the "Framingham plant"). From at least 1980 to about July 1987, automobiles were painted at the Framingham plant by a process that included a topcoating step and, when necessary, a final repair coating step. The topcoatings and final repair coatings that were used at the Framingham plant during this period contained VOCs which were emitted into the atmosphere during the surface coating process. In about July 1987, operation of the automobile surface coating facilities previously owned and operated by General Motors at the Framingham plant (hereinafter "the lacquer coating lines") was terminated.

STATUTORY AND REGULATORY FRAMEWORK

8. Section 109(a) of the Clean Air Act, 42 U.S.C. § 7409(a), requires the Administrator of EPA ("the Ad-

ministrator") to promulgate primary and secondary National Ambient Air Quality Standards ("NAAQS") for any air pollutant for which air quality criteria are issued. The primary standard must be designed "to protect the public health" with "an adequate margin of safety." 42 U.S.C. § 7409(b)(1). The secondary standard must be sufficient "to protect the public welfare from any known or anticipated adverse effects" of the pollutant. 42 U.S.C. § 7409(b)(2).

9. On February 8, 1979, the Administrator promulgated, pursuant to Section 109, a combined primary and secondary NAAQS for the photochemical oxidant know as ozone, which standard is codified at 40 C.F.R. § 50.9.

10. To achieve the NAAQS for ozone, Section 110(a) of the Act, 42 U.S.C. § 7410(a) requires each State to promulgate and submit to EPA for approval a State Implementation Plan ("SIP") containing regulations for reducing emissions of air pollutants from sources within the State that contribute to ozone formation. Each SIP is federally enforceable, if approved. Each SIP is to achieve and maintain the NAAQS within an established time limit, 42 U.S.C. § 7410, which in most cases must be no later than December 31, 1982, and may not in any case be later than December 31, 1987, 42 U.S.C. § 7502. In addition, each SIP applicable to a "nonattainment area"—an area where EPA has determined that an air pollutant exceeds the NAAQS for that pollutant—must require such reductions in emissions from existing sources of the pollutant in the area as may be achieved through the adoption of, at a minimum, reasonably available control technology. 42 U.S.C. § 7502(b)(2).

11. The entire state of Massachusetts is a nonattainment area for the primary ozone NAAQS. *See* 40 C.F.R. § 81.322. VOCs are an "air pollutant," as defined in Section 302(g) of the Act, 42 U.S.C. § 7602(g), that contributes to ozone formation.

12. Massachusetts, through its DEQE, has promulgated regulations codified at 310 CMR 7.18(7) which limit VOC emissions from automobile surface coating lines. In the form approved by EPA on September 16, 1980, *see* 45 Fed. Reg. 61293, 61295 (copy attached as Exhibit 1), and as amended effective November 9, 1983, *see* 48 Fed. Reg. 51480, 51482 (copy attached as Exhibit 2), these regulations (hereinafter the "automobile coating SIP provisions") are incorporated in the Massachusetts SIP.

13. The Massachusetts automobile coating SIP provisions provide in part:

> (7) *U Automobile Surface Coating.* No person owning, leasing, or controlling the operation of any automobile assembly plant shall cause, allow, or permit emissions therefrom in excess of those emission limitations set forth in the following table and within the time schedules specified in the following table.

Table 5
Emission Limitations
Automobile Surface Coating

U Volatile Organic Compounds

Emission Source	Emission Limitations Lbs. of volatile organic compounds per gallon of coating (excluding water) at application	Compliance Date Achieve Full Compliance with emission limitation
Topcoat application, flash off area, and oven	5.8*	By December 31, 1979
	5.0*	By December 31, 1982
	and 2.8*	By December 31, 1985
Final repair application, flash off area, and oven	4.8*	By December 31, 1985

* *Note*: Compliance with these emission limitations shall be based upon an arithmetic average of topcoat coatings and final repair coatings.

14. The Massachusetts automobile coating SIP provisions, as federally approved, applied at all times relevant to this Complaint to the lacquer coating lines at General Motors' Framingham plant.

CLAIM FOR RELIEF

15. From January 1, 1986 until operation of the lacquer coating lines was terminated in about July 1987, VOC emissions from topcoatings and final repair coatings on those coating lines exceeded the emission limits in the automobile coating SIP provisions during virtually every day the lines were in operation. There was no pollution control equipment operating on these lines to control VOC emissions at any relevant time.

16. Under Section 113(a) of the Act, 42 U.S.C. § 7413(a)(1), if the Administrator of EPA finds a person to be in violation of an applicable SIP, the Administrator shall notify the person and the state in which the SIP

applies. If the violation extends beyond the thirtieth day after the date of the Administrator's notification, the Administrator may bring a civil action under Section 113(b)(2) of the Act for injunctive relief, civil penalties of up to $25,000 per day of violation, or both.

17. On August 14, 1986, EPA issued General Motors a Notice of Violation under Section 113(a) of the Act, 42 U.S.C. § 7413(a), citing violations of the Massachusetts automobile coating SIP provisions on the topcoat and final repair coating lines at the Framingham plant. EPA sent a copy of the Notice of Violation to the Massachusetts DEQE pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1).

18. General Motors received the Notice of Violation on August 18, 1986.

19. After September 17, 1986, VOC emissions from topcoatings and final repair coatings used on the lacquer coating lines at the Framingham plant continued to exceed the emission limits set forth in the Massachusetts automobile coating SIP provisions.

20. General Motors has, therefore, violated the Massachusetts automobile coating SIP provisions and Section 113 of the Act, 42 U.S.C. § 7413.

WHEREFORE, Plaintiff, United States of America, respectfully prays that this Court enter judgment against Defendant for:

(a) Civil penalties of up to $25,000 for each day on which Defendant has operated the lacquer coating lines at the Framingham Plant in violation of the Massachusetts automobile coating SIP provisions or the Act;

(b) Plaintiff's costs of this action; and

(c) Such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

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D. *United States* v. *General Motors Corp.*, No. 87-2068-Mc (D. Mass. May 16, 1988)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 87-2068-Mc

UNITED STATES OF AMERICA,
Plaintiff,

v.

GENERAL MOTORS CORPORATION,
Defendant.

MEMORANDUM AND ORDER

May 16, 1988

Mc NAUGHT, D. J.

This action comes on to be heard on defendant General Motors' ("GM") motion to dismiss or, in the alternative, for summary judgment. Since affidavits and other documents outside the pleadings have been presented, we treat the matter as a motion for summary judgment. The issue before us is the Environmental Protection Agency's ("EPA") enforcement authority under the Clean Air Act (the "Act"), 42 U.S.C. § 7401 *et seq.*

The Clean Air Act provides for the EPA to establish National Ambient Air Quality Standards ("NAAQSs") which States must meet by specified deadlines. 42 U.S.C. § 7409. The states, in turn, are responsible for devising State Implementation Plans ("SIP") which regulate the specific details of how implementation is to be achieved. These SIPs must be submitted by the state to the EPA for approval. 42 U.S.C. § 7410. Then, by the terms of section 7410(a)(2):

> "The Administrator shall, within four months after the date required for submission of [the SIP], approve or disapprove such plan or each portion thereof. The Administrator shall approve such plan . . . if he determines that it was adopted after reasonable notice and hearing and that [certain other criteria are met]."

Once the SIP has been approved by the EPA, it is enforceable under both State and federal law.

The original SIP is not necessarily the final word, however. Under 42 U.S.C. § 7410(a)(3)(A), the state may submit revised SIPs to the EPA for approval.

> "The Administrator shall approve revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and hearing."

The heart of the issue before us is whether this provision requires the EPA to approve or disapprove proposed SIP revisions within four months as is the case for original SIPs.

The facts before us are as follows: In February, 1979 the EPA promulgated NAAQSs having to do with photochemical oxidants, including ozone. One of the industries affected by these NAAQSs was the GM Plant in Framingham, whose painting facilities emitted volatile organic compounds ("VOCs") which react with the atmosphere to create ozone.

Later that year, the Massachusetts Department of Environmental Quality Engineering ("DEQE") submitted a proposed SIP which included provisions regulating VOC emissions from automobile surface coating operations. 310 CMR 7.18(7). GM's Framingham plant is the only such facility in the Commonwealth. EPA approved this regulation in 1980. 45 Fed. Reg. 61293, 61295. This SIP required GM to meet

compliance regulations in stages, with full compliance by December 31, 1985, some two years earlier than the maximum time allowed by the NAAQS.

In October 1981, the EPA published a policy statement which acknowledged a shift in automobile painting technology from the older lacquer-based process to a new basecoat/clear coat ("BC/CC") process, which would eliminate many prior pollution problems. 46 Fed. Reg. 51366. This statement provided that the EPA would allow revisions of SIPs which gave automakers until 1986 or, in some cases, 1987 to shift to the BC/CC process. *Id.* at 51367.

In November 1984, GM submitted a proposed compliance schedule to DEQE. This schedule related to the lacquer operations which were still in use at Framingham, and asked for an extension of time, beyond the end of 1985, to install the necessary emission controls. By June, 1985, however, GM had indicated its plans to convert the Framingham plant to the BC/CC process. This conversion was expected to take until the end of 1987. On December 30, 1985, the day before the final compliance deadline under the original SIP, DEQE proposed a revised SIP which would give GM until August 31, 1987 to comply with the NAAQS.

To make an already long story shorter, GM began construction of a new $200 million BC/CC facility while continuing its out-of-compliance (under the original SIP) lacquer operations. For its part, EPA Region I conducted negotiations with GM and DEQE on the matter, but with no satisfactory resolution. According to the affidavit of John L. Hamisch, the Chief of the State Air Programs Branch of EPA Region I, on May 30, 1986 Region I was prepared to send a proposed disapproval of the revised SIP to EPA Headquarters, but delayed this action at DEQE's request. The proposed disapproval did go to EPA Headquarters on July 2, 1986. Final decision on the matter has yet to take place as the paperwork has floated about the EPA.

Notwithstanding this, in August 1986 the EPA issued a "Notice of Violation" to GM based on the requirements of the original SIP, and on August 17, 1987, the United States brought this action. GM's new BC/CC plant was completed in July 1987, the lacquer plant closed permanently, and since that time GM has been in compliance with all applicable NAAQSs.

The issue before us—whether or not the provisions of section 7410(a)(3)(A) incorporate the four month deadline of section 7410(a)(2)—is an open question in this Circuit. As conceded by the government, however, the weight of authority is that it does. The most recent case to address the subject is *United States v. Alcan Foil Products, et al.*, (C.A. No. 87-0434 L (CS), W.D. Ky., March 15, 1988).

Alcan also involved SIPs and proposed SIP revisions dealing with VOC emissions, in that case from rotogravure printing presses. The facts are quite similar to those before us. The EPA approved the pertinent original SIP in 1981. In 1984 the EPA approved an initial revision of the SIP. In March of 1986, however, a second revision was proposed. Just over four months later, without taking action on the proposed SIP revisions, EPA served Alcan with a noncompliance notice. A year and one day later, having notified Alcan of perceived obstacles to approval of the proposed SIP, but not yet having acted upon it, EPA filed suit. As of the date of the *Alcan* decision, more than two years from the time Kentucky had proposed its revised SIP, the EPA had not yet acted.

The *Alcan* court relied heavily on the other principal case in this area, *American Cyanamid Co. v. EPA*, 810 F.2d 493 (5th Cir. 1987). As in *Cyanamid*, the court held that although the EPA had the authority to reject the proposed SIP and to enforce the old standard from that point on, it could take no enforcement action until then. *Alcan* at 4.

Any other result makes little sense from a practical standpoint. The very structure of the Clean Air Act describes a

cooperative venture in which federal authorities prescribe long-term national standards but allow each state, within limits, to determine the best way to reach them. *Cyanamid* at 500. Indeed, the language of section 7410(a)(3)(A) is such that

> "[t]he Agency is plainly charged by the Act with the responsibility for setting the national ambient air standards. Just as plainly, however, it is relegated by the Act to a secondary role in the process of determining and enforcing the specific, source-by-source emission limitations which are necessary if the national standards it has set are to be met . . . [S]o long as the ultimate effect of a State's choice of emission limitations is in compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission standards it deems best suited to its particular situation."

Train v. Natural Resources Defense Council, Inc., 421 U.S. 60, 79 (1975).

Were we to accept the government's interpretation of section 7410(a)(3)(A) the role of the states in this cooperative venture would be severely curtailed. Clearly, one of the reasons the states were authorized to propose revisions to SIPs is that they are closer to the problems and, therefore, better able to determine the best interests of their citizens and state industries in achieving the mandatory federal standards. A system which would allow EPA to proceed indefinitely without accepting or rejecting the state's plan, while at the same time enforcing the previous law, would put all the cards in federal hands. This is clearly contrary to the intent of the statute.

The United States makes much of the idea that proposed SIP revisions are different from original SIP proposals. This is so in part, they argue, because the groundwork for many original SIPs was already in place and because there was a

need, initially, to get up to speed in Clean Air Act enforcement. In addition, SIP approval was necessary before any of EPA's other activities could begin, whereas proposed SIP revisions must compete with other EPA priorities. Consequently, the government insists, "EPA [should be] entitled to a reasonable time for action on proposed SIP revisions submitted by the statutes, not constrained by the four-month period for decisions on original SIPs." (Plaintiff's Brief at 21).

We agree that the EPA should have a "reasonable" time to review and act upon proposed SIP revisions. As it is, we believe that the four month period which the *Alcan* and *Cyanamid* courts have agreed upon meets this standard. *Accord Duquesne Light Co. v. EPA*, 698 F.2d 456 (D.C. Cir. 1983); *Council of Commuter Organizations v. Thomas*, 799 F.2d 879 (2d Cir. 1986); *Council of Commuter Organizations v. Gorruch*, 683 F.2d 648 (2d Cir. 1982). *Contra United States v. National Steel Corp.*, 767 F.2d 1176 (6th Cir. 1985). This is so for a number of reasons.

First, the EPA always holds the ultimate trump card: it may at any time during or after the allowed four month period reject the proposal and invoke enforcement proceedings under the original SIP. Second, it strains credulity that truly important or controversial SIP revisions cannot be effectively identified early on in the process and scheduled for expedited review. This is especially so since SIP revisions will seldom be breaking "new ground," but will merely modify already approved procedures. Third, a period any greater than four months would leave both the states and the affected industries in an unjustifiable state of limbo. For an indefinite period, the state would be unable to act to balance dictated national priorities with the interests of its citizens and industries as the Clean Air Act intended. And the industries themselves, though fully in compliance with state law, would in some instances face the Scylla and Charybdis choice between ceasing operations now, or possibly being forced out of business by heavy fines later. Although it is not likely

that such fines in Framingham would force GM to bankruptcy, that would be cold comfort to Framingham workers who might be laid off while a new plant was being built or because the plant was moved out of state.

The provisions of 42 U.S.C. § 7410(a)(3)(A) do not call for that choice. We agree with the *Alcan* and *Cyanamid* courts and others that the statute parallels the provisions of section 7410(a)(2) in providing EPA with four months to render a decision on proposed SIP revisions. If a decision is delayed beyond that time, the EPA is prohibited from bringing or continuing enforcement proceedings under the original SIP until final action is taken.

The proposed SIP revision in issue here went to EPA nearly two and one-half years ago, and final action has yet to be taken. In the meantime, GM has built a brand new $200 million facility, shut down permanently the offending lacquer plant, and come into full compliance with the ozone NAAQSs. For EPA to complain at this point that it was not given "reasonable" time to act smacks of closing the barn door after the horse is already out. If the EPA is to achieve its stated objective in the future, it will have to get the door closed faster.

For all of the above reasons, defendant's motion for summary judgment is GRANTED.

SO ORDERED.

JOHN J. McNAUGHT
UNITED STATES DISTRICT JUDGE